Chapter 14: **Appendices**

A. Forms (non-CONNECTIONS)

1. New York State Unified Court System (UCS) Family Court: Child Protective Forms

Information regarding the OCA CPS forms can be found electronically through the following link: http://www.nycourts.gov/forms/familycourt/childprotective.shtml

2. New York State application for certain benefits and services (LDSS-2921 Statewide, [Rev. 7/16])

This is the common application for the following services:

- Public Assistance
- Child Care in lieu of Public Assistance
- Supplemental Nutrition Assistance Program
- Medicaid and Supplemental Nutrition Assistance Program
- Medicaid and Public Assistance
- Services, including Foster Care
- Child Care Assistance
- Emergency Assistance Only

3. Plan of Safe Care (NYS OCFS Form-2196)

See next page for *sample* of this form. Follow instructions below to download a fillable Word form or click this link, https://ocfs.ny.gov/main/Forms/Foster_Care/OCFS-2196.docx

This form and all other OCFS forms can be found online at https://ocfs.ny.gov/main/documents/forms_keyword.asp. Type the form number or keyword into the search box provided on the forms page.

4. Forms to implement, relaunch, or modify a family assessment response (FAR)

OCFS-4362, Application to Relaunch a Child Protective Services (CPS) Family Assessment Response (FAR) Program

OCFS-4363, Family Assessment Response (FAR) Change Request Form

OCFS-4364, Family Assessment Response (FAR) Implementation Guidelines

OCFS-4365, Application to Provide a Child Protective Services (CPS) Differential Response System by Adding Family Assessment Response (FAR)

OCFS-2196 (05/2018)

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

PLAN OF SAFE CARE

Name of infant: _____ DOB: / /

Admission date: / / Discharge date: / /

Individual developing POSC:* _____ Individual monitoring POSC:* _____

Phone: ( ) Phone: ( )

Email: Email:

Household Members and Affected Family or Caregivers of the Infant:

Name	Age	Relationship to infant	Name	Age	Relationship to infant

Post-Discharge Family Strengths and Goals: (e.g., breastfeeding, housing, smoking cessation, parenting support, recovery)

Identified Supports: (e.g., stable living environment, family and friends, employment, etc.)

Safety and Protective Factors Present: (e.g., parental resilience, social connectedness, knowledge of parenting and child development, social and emotional competence of children, etc.)

Family Is Currently Involved in the Following Services:

Service	Organization	Contact person/Phone/Email

New Family Services Referred or Recommended:

Service (indicate referred or recommended)	Organization	Contact person/Phone/Email

**Plan of Safe Care (POSC)*

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OCFS-2196 (05/2018)

Comments:

Signature of parent /caregiver: _____

Date: ____/____/____ Print name: _____

Signature of staff: _____

Date: ____/____/____ Print name: _____

Review by (Date): ____/____/____

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OCFS-4362 (04/2019)

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

APPLICATION TO RELAUNCH A CHILD PROTECTIVE SERVICES (CPS) FAMILY ASSESSMENT RESPONSE (FAR) PROGRAM

Name of Applicant County:
Name and contact information for the person in your agency to contact regarding this application:

Please complete all items in this application. It may be helpful to refer to OCFS's Family Assessment Response (FAR) Implementation Guidelines for ideas about the information to provide in each section.

I. Considerations Regarding Relaunching FAR

A. Date that your county previously suspended FAR:

B. Describe fully the contributing conditions and reasons FAR was previously suspended in your county.

C. Describe the rationale for your agency reinitiating a differential response through the addition of a FAR at this time.

D. Describe the changes that have occurred in your agency that will now enable it to make FAR both a successful and permanent part of your CPS response. Describe any actions your agency has taken, or will take, that will address the conditions that previously resulted in the suspension of FAR, and that will enable your agency to institutionalize FAR as a differential response.

II. Rationale for Relaunching a CPS Differential Response System

A. Describe your rationale for creating a differential response system through the implementation of a FAR track.

B. Provide a brief assessment of your agency's current child welfare/child protective services (CPS) case practice, including an assessment of your agency's current strengths regarding family engagement, assessing safety and risk, family-led strengths and needs assessment, and solution-focused practice.

C. Identify areas of practice in which you anticipate that you will need development and support to successfully implement the new FAR track.

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III. Intake - Criteria for Assigning Reports to FAR

While New York State Law prohibits assigning CPS reports containing certain categories of allegations to FAR, the majority of CPS reports remain eligible for FAR assignment. The New York State Office of Children and Family Services (OCFS) has found that when districts severely limit the types of allegations assigned to FAR, the districts are less likely to be successful with their implementation of FAR. Therefore, OCFS asks districts to commit to accepting a broad range of allegations for FAR assignment.

As per New York State law, districts cannot assign to FAR any reports alleging abuse or neglect that occurred outside of family settings (e.g., in day care or residential settings). Reports categorized as foster care are also ineligible for FAR.

If a report contains any of the following allegations, state law requires the report to be assigned to the investigative (INV) track and assignment to FAR is prohibited:

- Sex abuse (i.e., commission of a sex offense against a child)
- Child prostitution
- Incest
- A child engaged in or was used for purposes of child pornography
- Assault against a child
- Attempted or committed murder or manslaughter in the first or second degree
- Child abandonment
- Severe or repeated abuse
- Neglect resulting in failure to thrive

A. List any additional criteria you will use to screen out reports from FAR (if applicable):

B. List the types of reports you *will* screen into FAR:

C. Describe the procedures you will use to determine whether to screen a report into FAR:

D. Please attach a copy of your proposed screening tool:

III. Projected Caseloads and Workforce Allocation

Developing a successful CPS differential response system requires assigning a sufficient number of cases to the FAR track to foster a vibrant program. Districts should aim to assign a meaningful percentage of their CPS reports (i.e., a target of 30-40 percent of all familial reports) to the FAR track. Medium and large districts may wish to provide a differential response only in one or more communities with a disproportionately large number of CPS reports and/or a disproportionately high minority representation in their CPS reports. Districts choosing this option should aim to assign at least 30 percent of all familial CPS reports in those geographically identifiable communities to the FAR track.

A. Caseload projections - After reviewing past CPS data in your district and the criteria you plan to use to assign cases to FAR, provide the following information to estimate your **projections** for the assignment of cases to the FAR track in the first 12 months of relaunch.

1. Total number of CPS reports in the past year; use the most recent data available:

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OCFS-4362 (04/2019)

2. Assuming the same number of reports in the first year of the FAR relaunch, the number of reports you project will require assignment to the investigative track (INV track) due to the requirements of New York State law is:
   Actual number:
   Percentage of all CPS reports:

3. Number of reports projected to meet your agency's criteria for assignment to FAR in the first year:
   Actual number:
   Percentage of all CPS reports:

4. Number of reports projected to be assigned to FAR in the first year:

   The reason for any difference in the numbers in items 3 and 4 is:

5. Describe any projections for expanding the use of FAR following the first year of your FAR implementation.

6. Additional comments (optional):

B. Decision-making about staff allocations

Describe your staffing plans to implement a differential response system. (Please note: staff who provide a differential CPS response through FAR must meet the same basic training requirements as all CPS investigative staff.) Include a description of your process to identify staff members who will provide FAR services and supervision. Will you assign staff to FAR by using specific criteria, by asking for volunteers, etc.?

C. Staff allocations projected for the first year

You may decide to have some units dedicated to FAR practice and others dedicated to investigations. Alternatively, units may be composed of both FAR workers and investigative workers. While there is flexibility in how districts design their staffing for a dual response, field experience has demonstrated that achieving success with FAR is more likely when staff new to FAR are assigned primarily to FAR and not routinely concurrently assigned to cover cases in the INV track.

1. **Number of units** currently providing child protective services:

2. **Number of caseworkers and supervisors** currently assigned to CPS:
   CPS caseworkers:
   CPS supervisors and senior caseworkers who supervise:

3. **Number of units** to be assigned to FAR
   Designate the number of units that will be responsible exclusively or primarily for FAR cases, and the number of any units that will have both FAR and INV workers (if applicable):
   Number of dedicated FAR units:
   Number of mixed FAR-INV units (if applicable):

4. **Supervisors** to be assigned to FAR
   Designate the number of supervisors and senior caseworkers who will supervise staff addressing:
   Exclusively or primarily FAR cases:
   FAR and INV units (if applicable):

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Describe the experience and qualifications of anticipated FAR supervisory staff:

5. **Caseworkers** to be assigned to FAR
   Number of caseworkers who will have exclusively/primarily FAR caseloads:

   Number of caseworkers who will have exclusively/primarily INV caseloads:

   Describe the experience and qualifications of anticipated FAR caseworker staff:

6. **Describe other staff resources** to be dedicated to FAR (if applicable):

7. **Additional information** about units and/or workers to be assigned, including **location** information if implementation will not be countywide (if applicable):

D. Projected start date for FAR relaunch

E. Phase in for the workforce
Describe your plans for phasing in your FAR workforce (if applicable):

F. Future plans (after the first year)
Describe plans regarding anticipated changes in staffing patterns to accommodate any expansion of your dual response program after the first year (if applicable):

IV. Plans for Service Provision
The following is a description of
- the types of services and supports you plan to provide to families through FAR; and
- the procedures you will use in offering these services, including the following:
  - Your strategies for actively engaging and empowering families in an ongoing process of assessing their strengths and needs, assessing child safety, and decision-making
  - How you plan to link families with needed services and goods through relationships with preventive services staff, TANF staff, and community service providers, including any plans to contract for such services

V. Community and Other Resources
The success of every differential response system is dependent upon the creation of vibrant and cooperative partnerships with services and programs in the community.

A. Identification of stakeholders – List the stakeholders for CPS that you have identified in your district and in your community:

B. Community outreach – Describe how your district has reached out to and coordinated with community stakeholders (or plans to do so) to plan your differential response system. If applicable, describe your plan to involve or partner with tribal nations within your jurisdiction to ensure that residents of the tribal nation(s) have the option to access FAR.

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C. Community resources – Please specify specific resources in each category that you can use to assist families through FAR:

- Government agencies or resources:

- Non-government agencies or resources:

D. Describe how you will use community resources to **reduce government involvement** (including that of child welfare services) in the lives of families while maintaining child safety and preserving families:

E. Local district funding for goods and services
A key component of implementing a differential response is the short-term provision of needed goods and services, including wraparound services to families and children. Describe your plans for funding such services and any policies for the use of those funds. Provide an affirmation that, when necessary, you plan to fund such services for FAR families with a local share of the costs. (Note: Local share is to be claimed through protective funding.)

VI. Maintaining Safety/Assessing and Responding to Risk

A. Intake – As with INV, FAR regulations require the initiation of a safety assessment within 24 hours. However, the procedures used to initiate the assessment may be different. Describe the procedures and processes you will follow to initiate the assessment of the safety of children in cases where you anticipate using FAR, including how you will or will not screen and assess SCR reports for FAR inclusion during on-call hours:

B. Assessment – As with INV, the completion of an initial safety assessment within seven days is a requirement with FAR. Before closing a case assigned to the FAR track, staff must assess for risk and for family strengths and needs. OCFS requires that districts use the *Family-Led Assessment Guide* (FLAG) and enter at least one completed FLAG into CONNECTIONS before closing a FAR case. The Risk Assessment Profile instrument that is completed for investigations is available, but optional for FAR.

- Describe the procedures and processes you will follow to protect the safety of children and engage families in fully assessing safety, risk, strengths and needs.

- Provide a statement in which you affirm that you will make a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR) if, at any time after a CPS report has been tracked to FAR, there is reason to suspect that a child is in immediate or impending danger of serious harm, *or* if the family refuses to cooperate in addressing family problems, *and* there is evidence of maltreatment.

C. Service provision – Describe how incorporating FAR will enhance your ability to protect children, maintain their safety, reduce risk, and preserve families:

D. **Domestic violence cases** – Describe the protocol that you have developed to maintain the safety of child(ren) and the non-offending caretaker in cases assigned to the FAR track where there is suspected or confirmed domestic violence:

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VII. Training

District staff and any non-district staff contracted to provide FAR assessment and services must participate in FAR training and coaching programs, as designed by OCFS. Field experience has shown that including as many non-FAR caseworkers and related child welfare staff as possible in the initial FAR trainings is very helpful in the implementation of a dual CPS response.

A. Describe training, orientation, or preparation that has already been provided or is planned for staff who will work on cases assigned to the FAR track:

B. Describe any training, orientation, or preparation that has already been provided or is planned for CPS investigative staff, any other child welfare staff, and/or other district staff:

C. Describe FAR training, orientation, or preparation that has already been provided or is planned for non-district organizations or entities:

D. Describe needs for additional training for the FAR relaunch (may refer to Section II. D.) if appropriate:

VIII. Monitoring and Quality Assurance

Each district must agree to participate in any monitoring or quality assurance activities with designated OCFS agents. Each district must also commit to engage in internal quality assurance activities that will enable it to continuously assess its fidelity to FAR regulations and practices. Internal quality assurance is necessary to assess the effectiveness of the differential response system and adjust procedures and practices as necessary.

A. Describe the quality assurance procedures that your district plans to follow to self-monitor and assess the success of your provision of services in cases tracked to FAR:

B. Describe the procedures your district will use to monitor and assess the provision of services to families in the FAR track by agencies you contract with to provide services (if applicable):

Reviewed and Approved by (Regional Office Lead):

_____ **Date:** ____/____/____

Reviewed and Approved by (Home Office):

_____ **Date:** ____/____/____

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NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

FAMILY ASSESSMENT RESPONSE (FAR) CHANGE REQUEST FORM

Date: / /

Agency Name:

Contact Person:

Phone: Email:

Prior to a local department of social services (LDSS) making any substantive change to its FAR practice, it must amend the FAR Application/Plan. In such circumstances, the LDSS must complete this form and submit it to OCFS for approval.

The following types of modifications are considered substantive, and the LDSS must complete this form and receive OCFS approval before proceeding:

- Change in the criteria used to determine cases for which FAR is available.
- Change in the number of FAR staff when such change is to accommodate criteria changes
- Any significant change made in the number of FAR staff for any other reason
- A change in the protocols for addressing domestic violence in FAR cases

Modification Requested or Made – Check all that apply:

- ☐ Change in screening criteria
- ☐ Increase or decrease in number of FAR staff
- ☐ Change in number of FAR units or reorganization of FAR responsibilities
- ☐ Change in DV protocols in FAR cases
- ☐ Other significant change (please describe):

Brief Description of the Modification:

For changes in screening criteria, please include the following:

- A description of the changes and an updated list of all your screening criteria
- The reason(s) for the change and the anticipated impact on CPS/FAR in your district
- The desired start date

For other changes resulting in an expansion or contraction, please provide the following:

- The rationale for the change and the anticipated impact on CPS/FAR in your district
- The desired start date
- The number of staff that need *FAR Process and Practice* training prior to start

Description and rationale:

Reviewed and Approved by (Regional Office Lead):

_____ **Date:** / /

Reviewed and Approved by (Home Office):

_____ **Date:** / /

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NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

FAMILY ASSESSMENT RESPONSE (FAR) IMPLEMENTATION GUIDELINES

This document contains key activities to help local departments of social services (LDSSs) prepare for implementing FAR in a dual response child protective services (CPS) system. Dual response refers to the LDSS operating both traditional CPS investigations (INV) and FAR. This resource is divided into three sections:

A. Describes what to consider before completing the FAR application
B. Outlines steps and activities to prepare for FAR implementation
C. Details the implementation schedule.

Using all three sections will support successful implementation and sustainability of FAR. There is some overlap of tasks to connect the value of each task to both initial and ongoing implementation and sustainability efforts.

Once the LDSS "letter of intent" and application to launch a dual CPS response system has been submitted to the New York State Office of Children and Family Services (OCFS) regional office (RO), a call will be scheduled with the LDSS, staff from the RO and home office, and our training partners to review the application. The topics discussed will include any recommended revisions/additions and how the LDSS will move toward final OCFS approval.

If you have any questions about these guidelines and/or the FAR application, please contact your RO representative.

A. Pre-Application Considerations

Prior to completing your letter of intent to implement FAR, it is helpful to assess the process and thinking what led to your decision to expand your CPS response capacity that supports making this significant shift. The following list of items, paraphrased from OCFS's FAR application, will orient you to the various program and staffing considerations that will need to be addressed to implement and sustain a FAR track, and will assist you in completing the FAR application:

☐ What is your rationale for applying to implement FAR and for undertaking the practice shift from traditional CPS investigations to dual response?

☐ What benefits have you identified that FAR has for the children and families in your community as well as to your staff?

☐ What current strengths in your department's CPS practice enhance family engagement, identify family strengths, preserve safety and reduce risk, and support solution-focused practice by your caseworkers?

☐ Are there areas of general CPS practice that will benefit from more extensive training and coaching in FAR practice and solution-focused strategies?

☐ Are there types of reports that are eligible for FAR that your district would not allow to be assigned to the FAR track? If so, what is it about those case types that leads you to that decision?

☐ OCFS requires that all incoming FAR counties make a commitment to assigning at least 30 percent of their new reports to FAR. What screening and staffing changes will you make to meet this threshold?

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☐ Successful partnerships with families in FAR requires successful partnerships with community partners. List some of the key partners that you will need to engage and educate about FAR to achieve this.

☐ How do you understand the assessment of safety and risk in FAR? How will you revise your approach to contacting families to assess for safety and risk to implement FAR?

☐ Are there any state or county initiatives that your county has implemented that you view as a specific enhancement to your ability to successfully launch a dual CPS response system in your county? If so, what and how?

☐ Quality assurance is an important component to FAR sustainability. Describe the quality assurance procedures that your district plans to utilize to self-monitor and assess the success of your FAR program with children and families.

B. Pre-Implementation Activities

☐ Establish an internal FAR workgroup as part of your implementation team within your district, including assignment of leadership, communication mechanisms, and other key roles. The team should include caseworkers, supervisors, managers, and administrators, both inside and outside of CPS to create a broad base of understanding and support for expansion of your CPS response system. RO staff, community partners, and families can be useful assets for an implementation team.

☐ Review existing internal policies regarding case practice that may need to be revised (e.g., contacting collateral contacts).

Report Screening, Length of FAR Service and FAR Workload

☐ Develop local district criteria for Statewide Central Register (SCR) reports eligible for FAR assignment, and ensure the criteria complies with the required exclusions (SSL 427-a(3)).

☐ Determine the standard length of a case assigned to FAR (i.e., 60 days, or 60-90 days with supervisory approval).

☐ For assistance in predicting your FAR staffing needs, refer to the previous service period and consider how many CPS reports may be eligible for FAR based upon the criteria you have developed.

☐ Prepare and pilot a FAR screening tool for staff who will be screening and assigning reports so that all screeners/supervisors are applying and approving your criteria consistently. Consider reviewing neighboring county screening tools, as you develop your own internal process.

☐ Develop and share with all CPS staff a flow chart of tasks and responsible personnel who will make your case review/assignment decisions. Include how a final decision will be made when there is a difference of opinion as to the proper assignment.

Staffing Plan

☐ Determine how caseworkers and supervisors will be selected to staff the newly designated FAR teams/caseloads. Consider staffing FAR units with volunteers, when possible. Reiterate that while management intends to honor caseworkers' requests for preferred assignments, staff must be assigned as needed.

☐ Based on annual SCR report projections and a preliminary pilot of your proposed screening tool, make your final decision on caseworker assignments and supervision of FAR unit(s).

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☐ Review assigned staff's training history to confirm that they have completed the required *Core* and *Child Protective Services Response Training*. If staff have not completed the required CPS training, arrange for them to attend and complete the training prior to your planned FAR start date or prior to any assignment of FAR cases.

☐ Determine protocols for after-hours/on-call caseworkers' response to SCR reports that are eligible for FAR and their training needs, including any supervisors who will not be supervising a CPS/FAR team, but will routinely support on-call staff. The assignment of SCR reports to the FAR or INV track also depends upon your county's screening criteria.

☐ The FAR practice of seeing children at home rather than during the school day means adjusted work days may be more common for FAR workers than for INV staff. Consider and determine any changes needed in staff schedules to accommodate the need to meet with all family members together, whenever possible. Any modification to staff schedules should align with union contracts.

☐ Make specific plans, including timeframes, for closing or reassigning INV cases that are currently assigned caseworkers who will be transitioning to the FAR program. This will allow new FAR caseworkers to be assigned FAR cases during the week of your FAR launch.

☐ Establish internal protocols for case assignments within each team to ensure inter-/intra-unit workload consistency and balance, including for caseloads that are mixed (INV and FAR) or FAR only. A key element for success is the realistic assignment of cases to teams that may already reflect FAR-core principles.

☐ Be proactive in addressing any perception that FAR units are assigned "easy" cases and INV units are assigned the "hard" cases. Engage in transparent conversations among both types of CPS units to minimize the tendency of an "us versus them" mentality. Discuss the important aspects of INV and FAR work: emotional toll on caseworkers of serious child injury cases, complexity of safety and risk analysis for cases that are not obvious, requirement to create time-consuming, court-related paperwork, need to assess what's causing family dysfunction when it's not overt, etc.

☐ Ensure that all CPS supervisors and caseworkers understand it is state law that requires certain allegations and situations to be assigned or reassigned to the INV track. This critical distinction may eliminate the tendency for a INV caseworker/supervisor/team to interpret that a case was assigned or reassigned to the INV track because a FAR caseworker was unable to address the family's issues.

Training:

☐ Confer with training partners and RO staff to determine who will attend the initial two-day *FAR Process and Practice* training (limit 30) and invite participants. In addition to selected FAR team members, invite other CPS or agency staff and selected community stakeholders (as space allows) to expand understanding and acceptance of the dual response system within the agency and community.

- A caseworker will be able to process a report assigned to FAR once that caseworker has completed the two-day *FAR Process and Practice* training.
- Caseworkers may be assigned to FAR cases before they have completed the additional training sessions (i.e., *Solution-Focused FAR Practice*, *Assessing Safety and Risk in FAR,* and *Supervising to a Practice Shift in FAR*). The additional training sessions may be completed prior to FAR being launched or within two to six months of FAR implementation.
- Two supplemental training days will be made available later in the year of your FAR implementation: *Increasing the Voice of Children and Youth in FAR* and

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Advanced Supervision in FAR. It is recommended that FAR caseworkers and supervisors have been practicing FAR for six months before receiving these advanced trainings.

☐ Districts often desire to have all their CPS staff complete *FAR Process and Practice* training to support consistency in understanding the FAR approach. If there is an identified need to provide additional FAR training to staff outside the initial 30 staff, determine which staff and/or community stakeholders will participate and plan for attendance.

☐ When staff are registered for *FAR Process and Practice* training, they are automatically registered for *FAR Computer-Based Training* (CBT). CBT should be completed by each participant within 10 days of the *FAR Process and Practice* training.

☐ Develop your training timeline with your planned implementation date, so the required two-day *FAR Process and Practice* training occurs two to four weeks prior to formal implementation and the subsequent required FAR trainings either before launch or within two to six months of the district's implementation.

☐ Secure a site for training. Off-site locations are preferable as they reduce the distraction of caseload issues or workload demands. Before initiating training, create a coverage plan using other CPS staff (caseworkers and supervisors) not attending the FAR training that will allow all participating staff to remain in the training room without interruption. Inform all CPS staff of your plan for caseload coverage for existing cases while designated caseworkers and supervisors are training.

☐ Set clear expectations for all staff participating in required FAR trainings, including appropriate behaviors and attentiveness.

C. Implementation Planning/Schedule

☐ Select your FAR "launch date" in consultation with your training partners and OCFS home and RO staff. Planning and scheduling for related pre- and post-implementation consultation, training, and coaching will proceed from this timeframe.

☐ Request and schedule on-site or phone pre-implementation consultation with training partners and RO staff to review and address all pertinent philosophical, technical, and procedural issues that will set the stage for a comprehensive and strategic launch of your dual response system.

☐ Arrange opportunities to connect with neighboring FAR colleagues to facilitate shadowing, resource sharing and consultation in the interest of collegiality and to build FAR casework practice capacity. Counties that are contiguous are especially useful to engage as cross-county case sharing and consultation will allow both counties to serve families who are eligible for FAR.

☐ Provide protected time for FAR caseworkers and supervisory staff to participate in the OCFS conference calls for LDSSs that have implemented FAR programs.

☐ Schedule the necessary IT changes with OCFS CONNECTIONS (CONNX) staff that will enable your staff to track families to FAR. The CONNX "update" should occur a week before the actual launch of FAR case tracking.

☐ Arrange for FAR staff to take the CONNX ILinc training *Documenting the Family Assessment Response in CONNECTIONS* online training. Contact your RO IT staff for documentation and navigation clarification as needed. Review all current CONNECTIONS FAR job aids and FAR policies to support compliance with CONNECTIONS capacities and expectations related to CPS/FAR documentation protocols.

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☐ Ensure that all applicable staff have attended the *FAR Process and Practice* training prior to FAR case assignment.

☐ Contact your training partners to arrange dates for newly assigned FAR staff to participate in the following required FAR training courses:

- *Solution-Focused FAR Practice*
- *Supervising a Practice Shift to FAR (supervisors)*
- *Assessing Safety and Risk in FAR*
- *Advanced Supervision in FAR* (For supervisors. This course is offered regionally and should be attended approximately six months following your FAR implementation.)
- *Increasing the Voice of Children and Youth in FAR* (This course is offered several months following the launch of FAR and can be attended six months following your FAR implementation.)

☐ Confirm relevant staff have completed all the required trainings.

☐ Confer with training partners and RO staff to determine coaching schedule, focus, expectations, and attendees. The coach will co-create an agenda for each coaching session with input from current FAR staff and the implementation team.

☐ Develop protocol and protected time for staff participation in FAR-specific webinars.

☐ Staff should have knowledge and access to the *FAR Practice Guide*, *FAR Documentation Guidelines*, *FAR Fundamentals,* and FAR newsletters.

☐ Confirm that all FAR casework and supervisory staff are appropriately utilizing the *Family-Led Assessment Guide* (FLAG) with families and are supporting the FLAG ratings with appropriate documentation.

Materials:

☐ Develop a district-specific notification letter for people who are eligible to participate in the FAR program (model available from OCFS or other LDSS with an approved FAR program).

☐ Adapt the FAR flow chart (Handout 4 from the *FAR Process and Practice* training) to match your FAR eligibility and ineligibility criteria, FLAG and case closure timeframes and options.

☐ Develop a district-specific FAR brochure(s) for FAR clients and community stakeholders (model available from OCFS or other LDSS with approved FAR program).

☐ Develop a district-specific family satisfaction survey (model available from OCFS or other LDSS with an approved FAR program). Determine when and how the survey will be distributed and how follow-up will occur. Survey follow-up is optional, but strongly recommended.

☐ Develop a district-specific closing letter for FAR families (model available from OCFS or other LDSS with approved FAR program).

☐ Develop a district-specific letter for mandated reporters whose reports may be assigned to FAR (model available from OCFS or LDSS with approved FAR program).

☐ Adapt the *FAR Orientation Guide for Counties* to match your county's FAR criteria and timeframe for use with internal and external stakeholders (available from OCFS or training partners).

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☐ Provide supervisory staff with support to use the *FAR Fundamentals* training materials to introduce new staff to FAR practice and philosophy prior to participating in required FAR training events.

Implementation Milestones/Model Design:

☐ Confirm that caseworkers understand assessing safety and risk during the FAR process, the safety decision standards for maintaining a case in FAR, and reassignment to INV per statutory requirements.

☐ Confirm that your FAR caseworkers and supervisors are using the *Case Consultation Framework* as a consultation tool to identify family resources and strategize solutions in every FAR case, within FAR teams in group consultation sessions and in one-on-one supervisory/caseworker consultation sessions. When a case is transferred from FAR to INV, the inclusion of INV caseworkers and supervisors is recommended in consultation sessions to create a smooth transition for the family and caseworkers.

☐Confirm that all CPS staff understand the statutory basis and process for reassigning a FAR case to the INV track within seven days and after seven days from receipt of a report from the SCR, and the process for managing subsequent report(s) on an existing case.

☐ Incorporate the *Six Principles of Partnership* into FAR practice and create expectations for their use in engaging families, collaterals, and peers.

☐ Ensure that supervisors and caseworkers understand and adhere to your county's established standards for closing a FAR case.

☐ Establish procedures for FAR case transfer to INV, preventive services, other units, and/or other community agencies, including a "warm hand off" to the receiving casework staff that includes the supervisors of both caseworkers.

☐ Develop protocols for the use of family meetings with FAR families and procedures for including children whenever possible.

Stakeholder Communication/Preparation:

☐ Identify local district and community stakeholders who will need to understand your county's dual response CPS system (e.g., child welfare and non-child welfare staff, foster care, preventive services, after-hours services, temporary assistance, school districts, Head Start, hospitals, law enforcement, domestic violence agencies, mental health, other community helping agencies, etc.)

☐ Determine how FAR case-practice orientation will be communicated to stakeholders and schedule internal/external meetings or open houses to share information that encourages dialogue and feedback on how their partnership will serve children and families. Consider using the FAR *Orientation and Presenter's Guide* to introduce and inform stakeholders about working within the FAR framework of practice.

☐ Reassess the need to engage stakeholders periodically to ensure the community remains well informed about FAR practice and their role in supporting it.

Monitoring and Quality Improvement:

☐ Develop protocols and processes for regular supervisory consultation and case review of FAR practice and documentation expectations.

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☐ Develop protocols and processes for group case consultation and supervision.

☐ Develop protocols and processes for monitoring the percentage of cases assigned to FAR and the use of the screening tool to track eligible cases to FAR.

☐ Develop protocols and processes for internal quality assurance case documentation review of FAR practice (instrument and guidelines available from OCFS).

☐ Develop protocols and processes for monitoring of informal and formal service usage; monitoring of coordinated transfers of case responsibility from caseworker to caseworker if a report is re-tracked to INV from FAR or transferred to Preventive Services from FAR. A case that is initially tracked to FAR can be retracked to INV only once, and only within the first seven days of the initial report.

Assistance to Families

☐ Assess staff's understanding of the FAR statute requiring that any services in place for families at the time a case is retracked from FAR to INV be maintained for consistency and to meet the ongoing needs of families.

☐ Ensure that staff are aware of all existing county resources that may provide support and assistance to FAR families.

☐ Ensure that guidelines and procedures are in place for staff to follow to use CPS funds for FAR cases, including obtaining needed funds and goods for families, using the Welfare Management System to authorize these funds/services without opening a formal preventive case, and submitting associated claims. Assess staff's understanding of the policies and procedures for securing additional services for families, and provide clarification and training if needed.

OCFS-4365 (04/2019)

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

APPLICATION TO PROVIDE A CHILD PROTECTIVE SERVICES (CPS) DIFFERENTIAL RESPONSE SYSTEM BY ADDING FAMILY ASSESSMENT RESPONSE (FAR)

Name of Applicant County:
Name and contact information for the person in your agency to contact regarding this application:

Please complete all items in this application. It may be helpful to refer to OCFS's Family Assessment Response (FAR) Implementation Guidelines for ideas about the information to provide in each section.

I. Rationale for Implementing a CPS Differential Response System

A. Describe your rationale for creating a differential response system through the implementation of a FAR track.

B. What benefits are you seeking for your district by implementing a differential response system? For the families reported to your district? For your community?

C. Provide a brief assessment of your district's current child welfare/CPS case practice, including an assessment of your district's current strengths regarding family engagement, assessing safety and risk, family-led strengths and needs assessment, and solution-focused practice.

D. Identify areas of practice in which you anticipate that you will need development and support to successfully implement the new FAR track.

II. Intake - Criteria for Assigning Reports to FAR

While New York State Law prohibits assigning CPS reports containing certain categories of allegations to FAR, the majority of CPS reports remain eligible for FAR assignment. The New York State Office of Children and Family Services (OCFS) has found that when districts severely limit the types of allegations assigned to FAR, the districts are less likely to be successful with their implementation of FAR. Therefore, OCFS asks districts to commit to accepting a broad range of allegations for FAR assignment.

As per New York State law, districts cannot assign reports alleging abuse or neglect at a day care program or in a foster family home to FAR.

If a report contains any of the following concerns, state law requires the report to be assigned to the investigative (INV) track and assignment to FAR is prohibited:

- Sex abuse (i.e., commission of a sex offense against a child)
- Child prostitution
- Incest
- A child engaged in or was used for purposes of child pornography
- Assault against a child
- Attempted or committed murder or manslaughter in the first or second degree
- Child abandonment
- Severe or repeated abuse
- Neglect resulting in failure to thrive

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A. List any additional criteria you will use to screen out reports from FAR (if applicable):

B. List the types of reports you will screen into FAR:

C. Describe the procedures you will use to determine whether to screen a report into FAR:

D. Please attach a copy of your proposed screening tool:

III. Projected Caseloads and Workforce Allocation

Developing a successful CPS differential response system requires assigning a sufficient number of cases to the FAR track to foster a vibrant program. Districts should aim to assign a meaningful percentage of their CPS reports (i.e., a target of 30-40 percent of all familial reports) to the FAR track. Medium and large districts may wish to provide a differential response only in one or more communities with a disproportionately large number of CPS reports and/or a disproportionately high minority representation in their CPS reports. Districts choosing this option should aim to assign at least 30 percent of all familial CPS reports in those geographically identifiable communities to the FAR track.

A. Caseload projections - After reviewing past CPS data in your district and the criteria you plan to use to assign cases to FAR, provide the following information to estimate your **projections** for the assignment of cases to the FAR track in the first 12 months of operation:

1. Total number of CPS reports in the district in the past year; use the most recent data available:

2. Assuming the same number of reports, how many familial reports do you project will require assignment to the INV track due to the requirements of NYS law:

3. Number of reports projected to meet your district's criteria for assignment to FAR in the first year:

4. Number of reports projected to be assigned to FAR in the first year:

5. Percentage of all familial CPS reports received that you project will be assigned to FAR:
   percent

6. Percentage of CPS reports *meeting your district's criteria for FAR* that you project will be assigned to the FAR track:
   percent

7. Describe any projections for expanding the use of FAR following the first year of your FAR implementation.

8. Additional comments (optional):

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B. Decision-making about staff allocations

Describe your staffing plans to implement a differential response system. (Please note: staff who provide a differential CPS response through FAR must meet the same basic training requirements as all CPS INV staff.) Include a description of your process to identify staff members who will provide FAR services and supervision. Will you assign staff to FAR by using specific criteria, by asking for volunteers, etc.?

C. Staff allocations projected for the first year

You may decide to have some units dedicated to FAR practice and others dedicated to investigations. Alternatively, units may be composed of both FAR workers and INV workers. While there is flexibility in how districts design their staffing for a dual response, field experience has demonstrated that achieving success with FAR is more likely when staff new to FAR are assigned primarily to FAR and not routinely concurrently assigned to cover cases in the INV track.

1. **Number of units** currently providing child protective services:

2. **Number of caseworkers and supervisors** currently assigned to CPS:
   CPS caseworkers:
   CPS supervisors and senior caseworkers who supervise:

3. **Number of units** to be assigned to FAR
   Designate the number of units that will be responsible exclusively or primarily for FAR cases, and the number of any units that will have both FAR and investigation workers (if applicable):
   Number of dedicated FAR units:
   Number of mixed FAR-INV units (if applicable):

4. **Supervisors** to be assigned to FAR
   Designate the number of supervisors and senior caseworkers who will supervise staff addressing:

   Exclusively or primarily FAR cases:

   FAR and INV units (if applicable):

   Describe the experience and qualifications of anticipated FAR supervisory staff:

5. **Caseworkers** to be assigned to FAR
   Number of caseworkers who will have exclusively/primarily FAR caseloads:

   Number of caseworkers who will have exclusively/primarily INV caseloads:

   Describe the experience and qualifications of anticipated FAR caseworker staff:

6. **Describe other staff resources** to be dedicated to FAR (if applicable):

7. **Additional information** about units and/or workers to be assigned, including **location** information if implementation will not be countywide (if applicable):

D. Projected start date (to start screening reports for differential response)

E. Phase in for the workforce
Describe your plans for phasing in your FAR workforce (if applicable):

F. Future plans (after the first year)
Describe plans regarding anticipated changes in staffing patterns to accommodate any expansion of your dual response program after the first year (if applicable):

IV. Plans for Service Provision

Describe the following:

- The types of services and supports you plan to provide to families through FAR
- The procedures you will use in offering these services, including
  - your strategies for applying the principle of actively engaging and empowering families in an ongoing process of assessing their strengths and needs, assessing child safety, and decision-making; and
  - how you plan to link families with needed services and goods through relationships with preventive services staff, TANF staff, and community service providers, including any plans to contract for such services.

V. Community and Other Resources

The success of every differential response system is dependent upon the creation of vibrant and cooperative partnerships with services and programs in the community.

A. Identification of stakeholders – List the stakeholders for CPS that you have identified in your district and in your community:

B. Community outreach – Describe how your district has reached out to and coordinated with community stakeholders (or plans to do so) to plan your differential response system. If applicable, describe your plan to involve or partner with tribal nations within your jurisdiction to ensure that residents of the tribal nation(s) have the option to access FAR.

C. Community resources – Please specify specific resources in each category that you can use to assist families through FAR:

- Government agencies or resources:
- Non-government agencies or resources:

D. Describe how you will use community resources to **reduce government involvement** (including that of child welfare services) in the lives of families while maintaining child safety and preserving families:

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E. Local district funding for goods and services

A key component of implementing a differential response is the short-term provision of needed goods and services, including wraparound services, to families and children. Describe your plans for funding such services and any policies for the use of those funds. Provide an affirmation that, when necessary, you plan to fund such services for FAR families with a local share of the costs. (Note: Local share is to be claimed through protective funding.)

VI. Maintaining Safety/Assessing and Responding to Risk

A. Intake – As with INV, FAR regulations require the initiation of a safety assessment within 24 hours. However, the procedures used to initiate the assessment may be different. Describe the procedures and processes you will follow to initiate the assessment of the safety of children in cases where you anticipate using FAR, including how you will or will not screen and assess SCR reports for FAR inclusion during on-call hours:

B. Assessment -- As with INV, the completion of an initial safety assessment within seven days is a requirement with FAR. Before closing a case assigned to the FAR track, staff must assess for risk and for family strengths and needs. OCFS requires that districts use the *Family-Led Assessment Guide* (FLAG) and enter at least one completed FLAG into CONNECTIONS before closing a FAR case. The Risk Assessment Profile instrument that is completed for investigations is available, but optional for FAR.

- Describe the procedures and processes you will follow to protect the safety of children and engage families in fully assessing safety, risk, strengths, and needs.

- Provide a statement in which you affirm that you will make a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR) if, at any time after a CPS report has been tracked to FAR, there is reason to suspect that a child is in immediate or impending danger of serious harm, *or* if the family refuses to cooperate in addressing family problems *and* there is evidence of maltreatment.

C. Service provision – Describe how incorporating FAR will enhance your ability to protect children, maintain their safety, reduce risk, and preserve families:

D. Domestic violence cases – Describe the protocol that you have developed to maintain the safety of child(ren) and the non-offending caretaker in cases assigned to the FAR track where there is suspected or confirmed domestic violence:

VII. Training

District staff and any non-district staff contracted to provide FAR assessment and services must participate in FAR training and coaching programs, as designed by OCFS. Field experience has shown that including as many non-FAR caseworkers and related child welfare staff as possible in the initial FAR trainings is very helpful in the implementation of a dual CPS response.

A. Describe training, orientation, or preparation that has already been provided or is planned for staff who will work on cases assigned to the FAR track:

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B. Describe any training, orientation, or preparation that has already been provided or is planned for CPS investigative staff, any other child welfare staff, and/or other district staff:

C. Describe FAR training, orientation, or preparation that has already been provided or is planned for non-district organizations or entities:

VIII. Monitoring and Quality Assurance

Each district must agree to participate in any monitoring or quality assurance activities with designated OCFS agents. Each district must also commit to engage in internal quality assurance activities that will enable it to continuously assess its fidelity to FAR regulations and practices. Internal quality assurance is necessary to assess the effectiveness of the differential response system and adjust procedures and practices as necessary.

A. Describe the quality assurance procedures that your district plans to follow to self-monitor and assess the success of your provision of services in cases tracked to FAR:

B. Describe the procedures your district will use to monitor and assess the provision of services to families in the FAR track by agencies you contract with to provide services (if applicable):

Reviewed and Approved by (Regional Office Lead):

_____ **Date:** ____/____/____

Reviewed and Approved by (Home Office):

_____ **Date:** ____/____/____

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B. Model letters

OCFS creates model letters that provide suggested language for districts and voluntary agencies to use for specified purposes. Districts and VAs should place model letters on agency letterhead and may modify language in the model letter as appropriate.

1. Sharing of confidential client-identifiable information between Child Protective Services (CPS) and Protective Services for Adults (PSA)

Some LDSSs have sought clarification of permissible means of sharing client identifiable CPS information with PSA. SSL §422(4)(A)(o) permits a CPS or an LDSS to provide CPS information to a provider or coordinator of services to which the CPS or LDSS has referred a child named in a CPS report or the child's family, or to whom the child or the child's family has referred themselves at the request of CPS or the LDSS, where the child has been reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR). The statute authorizes CPS to provide reports or other information necessary to enable the provider or coordinator of services to establish and implement a services plan for the child or family, to monitor the provision or coordination of services, or to directly provide services to the child or family. Such disclosure may not include information that would identify the source of the report, absent the written consent of the source. CPS information received by the provider or coordinator of services is also subject to limitations on redisclosure, as set forth in SSL §422(4)(A). A PSA unit of an LDSS is considered to be a permissible provider or coordinator of services to which CPS may refer a family involved in a CPS case that is pending determination or that is an indicated report.

There is no authority in SSL § 422(4)(A)(o) for the disclosure to providers or coordinators of services of CPS information from an unfounded report of child abuse or maltreatment.

The "Authorization for Information" model letter can be found as an attachment to 12-OCFS-INF-01 Sharing of Confidential Client-identifiable Information Between Child Protective Services (CPS) and Protective Services for Adults (PSA).

Sample letter of authorization

Authorization for Information

I, _____, currently residing at _____, hereby authorize the New York Statewide Central Register of Child Abuse and Maltreatment to furnish all information which may be contained within the New York Statewide Central Register of Child Abuse and Maltreatment to _____ affiliated with _____ (agency), on my behalf in accordance with the Child Protective Services Act of 1973.

The names and birth dates of the children belonging to the individual listed on the first line of this form as well as previous addresses of this individual are necessary to conduct a thorough and accurate search of the Statewide Central Register database. Please furnish this information below:

Names and birth dates of children:

_____

_____

Previous addresses starting with most recent:

_____

_____

_____

Signature _____

On this _____ day of _____, 20___, before me personally came _____ (individual) to me known and known to be the same person described in and who executed the within statement, and he/she duly acknowledged to me that he/she executed the same.

_____ Notary Public

2. Model letter – consent for temporary placement of child(ren) in foster care (pursuant to FCA §1021)

This letter is used for the parent(s) or legal guardian(s) to give written consent to have the child(ren) temporarily removed from the home as per the FCA §1021 for details

Sample letter

I (We) reside at _____.

I (We) am (are) the _____ of the following named child (children).

NAME	BIRTHDATE
_____	_____
_____	_____
_____	_____
_____	_____

I (We) hereby consent to the temporary placement of my (our) child (children) with the Commissioner of Social Service of _____ County.

I understand that this placement is pursuant to Family Court Act § 1021 and I have been informed that, in the event I do not consent to the placement of my child (children), Child Protective Services will apply to the _____ County Family Court for a temporary removal order pursuant to Family Court Act §1022. I realize that if the application was granted, it would provide for the temporary placement of my child(ren).

I (We) understand that a Child Protection Petition will be filed forthwith in _____ County Family Court on behalf of the above named child (children) and that I (we) will be given notice of the date, time and place of the hearing.

_____

Signature of Parent(s) or Guardian

Date:_____

Witness:_____

3. Intent to ask Family Court for a temporary removal (per FCA §1023)

This letter is a notice to parent(s) or legal guardian(s) that CPS uses an application with the County Family Court for an order to temporarily remove child(ren) as per the FCA §1023.

Sample letter

Dear _____,

Re: **NYS Case #** _____

Report ID # _____

Report Date _____

This is to inform you that we intend to apply to the Family Court of the State of New York, County of _____, for an order of temporary removal [or for a temporary order of protection] [or an order for the provision of the following service, services or assistance: _____] The court is located at _____.

You have a right to be present in court when the application is made and to be heard on the application. You have the right to be represented by a lawyer and, if you can't afford a private lawyer, you have the right to ask the court to assign a lawyer.

Date: _____

Name: _____

Title: _____

Agency: _____

Address: _____

Telephone Number: _____

4. Mandatory reporter consent to release identifying information

This letter is used by mandated reporter to authorize release of his/her identity to a specified person as a source of a report made to the SCR.

Sample letter

I, _____ , am the source and/or person who made the report of suspected child abuse or maltreatment concerning _____. (child named in the report)

By this consent, I hereby authorize disclosure of my identity as the source and/or person making the report as stated in the reports and records in the possession of the New York State Office of Children and Family Services and/or the local department of social services to _____, as _____ (requestor), who resides at _____**.** (relationships to child / report)

I am aware that my identity and facts which would identify me as the source and/or person making the report are generally confidential pursuant to SSL §422.4(A). I realize that disclosure by me that I am the source and/or person making the report is solely within my discretion with respect to certain entities and persons, including _____ (requestor) as _____**.** (relationship to child / report)

Knowing that, I am hereby consenting to the release of such information about my identity in the possession of the New York State Office of Children and Family Services and/or the local department of social services to _____.

_____ _____

DATE NAME

_____

ADDRESS

5. Model notice of existence of a report (sent by a custodial agency where children are in foster care in a different social services district)

This model notice informs the LDSS that a report of suspected child abuse or maltreatment has been made regarding a child in foster care who is under the LDSS's care and custody. See policy 16-OCFS-ADM-13, "Requirements Relating to CPS Reports Regarding Foster Parents."

Sample letter

RE: NYS CASE # _____
REPORT ID # _____
REPORT DATE _____

This is to inform you that _____**,** a child(ren) placed in your care and custody, has been named in a report of suspected abuse or maltreatment. The foster parent(s) named the subject(s) of the report is/are _____.

This report, which was received by the New York Statewide Central Register of Child Abuse and Maltreatment (State Central Register) on _____**,** has been transmitted to the _____ County Department of Social Services child protective service unit for investigation as required by SSL §§422 and 424.

SSL §424 allows the local child protective service 60 days from the time of receipt of the report to complete a full investigation of the allegations contained within the report as well as an evaluation of the care being provided to the child(ren) placed in the home.

If the report is determined to be "unfounded", meaning that there is no credible evidence to prove the child was abused or maltreated, all information regarding the child(ren) and the subject of the report will be sealed in the State Central Register. If the report is determined to be "indicated", meaning there is some credible evidence that the child was abused or maltreated, the information will remain on file in the State Central Register.

After the investigation is completed you will be notified of the report determination. As the agency with care and custody of this child(ren), you will receive copies of the State Central Register reports if the report is indicated. If the report is unfounded you will be notified of the determination and it will be suggested that you update your records as to the unfounded determination.

If you wish to receive more information about this report, please contact _____.

Sincerely,

_____

Commissioner, _____ County DSS

cc: Authorized Agency Supervising the Placement

6. Relative model notification letter

Both federal and state law require that due diligence be exercised to identify and locate a child's relatives within 30 days of the child's removal from the custody of the child's parent(s). The local social services district must provide the relatives with notification of the child's removal and explain the options under which the relatives may provide care of the child through foster care or direct legal custody or guardianship, including kinship guardianship assistance, and any options that may be lost by failure to respond timely to the notification [see also 18 NYCRR 430.11(c)(4)]. OCFS permits social services districts to make the notification verbally or in writing and does not prescribe a required format for the written notification. However, it is strongly recommended by OCFS and ACF that written notice be made. OCFS requires that at the time of the child's removal that relatives be given a copy ofKnow Your Options: Kin Caring for Children (Pub. 5175) and Make an Informed Choice: Kin Caring for Children (Pub. 5120). For additional resources the relative may also be given, Having a Voice & a Choice: New York State Handbook for Relatives Raising Children (Pub. 5080) (see 09 OCFS-ADM-04).

At the time a caregiver chooses to provide care outside of the foster care system and, at any time that it becomes known that a person is a non-parent caregiver • Know Your Resources: Non-Parent Caregiver Benefits (Pub. 5194) (see 20-OCFS-ADM-05) If the relative chooses to become a foster parent or when the a child's foster care placement changes the relatives must be given a copy of Know Your Permanency Options: The Kinship Guardianship Assistance Program (see 11-OCFS-ADM-03,18-OCFS-ADM-03, and 18-OCFS-ADM-23).

OCFS has developed a model notification letter that includes a brief description of the KinGAP option for relatives (other than a non-custodial parent). LDSS may use this model or develop their own relative notification letter, as long as it includes information on KinGAP, or verbally share this information with the relative(s).

Below is the model notification letter; for additional information please see 11-OCFS-ADM-03. A Spanish version is available online.

Sample letter

[Date]

[Relative Name]
[Street Address]
[City, ST ZIP Code]

Dear **[Relative Name]** :

My name is **[Caseworker's Name]** and I am a caseworker for **[LDSS/agency name]** . I am working with the **[Family's Name]** family. Their child **[Child's Name],** who was born on **[DOB] ,** is now in the custody of **[LDSS/agency name]** . I am contacting you because your name was given to me as a relative of **[Child's Name]** .

Relatives play an important role in the lives of children, especially those who are being temporarily cared for by someone other than their parents. Children do better when they are placed or able to stay connected in other ways to people who know and care about them.

I am contacting you to see if you are interested in being considered as a placement resource for or otherwise staying in contact with **[child's first name]** . I would like to discuss with you your options for helping to care for **[child's first name]** . For example, you may want to offer a temporary home for **[child's first name]** so he/she does not need to be placed in foster care, or you may be interested in applying to be a foster parent for **[child's first name]** . Depending on the type of involvement you are interested in, there may be financial, medical, or other support available. Be aware, eligibility for programs or assistance described below, and the options available for the child's permanency, can be impacted by the decisions made at the time of initial placement. You should be sure you understand these impacts. Please ask me any questions you may have about this process.

If permanent care for **[child's first name]** other than return to parent(s) becomes necessary, you may be interested in guardianship or adoption. New York State has both a kinship guardianship assistance program and an adoption subsidy program that relatives may be eligible for when at first they serve as the foster parent to a child. Both programs provide financial support, and in most cases medical coverage for the child until the child reaches the age of 18, or in some cases 21, for as long as the guardian or adoptive parent remains legally responsible for the child and provides support. Please review the materials enclosed with this letter for more information about placement options and contact me if you have questions.

If you are not able to provide a home for **[child's first name]** , there are other ways for you to stay involved in his/her life and offer important family connections. You might visit regularly, arrange weekend or holiday visits at your home, otherwise keep in contact or offer support to the child or family.

Please contact me as soon as possible so I can assist you with reviewing all the options and providing you with any forms or applications you may need. I may be reached at **[phone number]** . I also ask that you share with me names and contact information of other relatives you think may be interested in connecting with or being a resource for **[child's first name]** .

Thank you, and I look forward to hearing from you.

Sincerely,

[**Your Name**]

[**Title**]

7. Parent of sibling (model) notification letter

The Preventing Sex Trafficking and Strengthening Families Act (the Act) expanded the range of relatives who must be notified when a child is removed from his or her home or when parents voluntarily transfer care and custody of the child in accordance with SSL §384-a. With the Act's requirement for relative notification, the birth or adoptive parents with legal custody of the removed child's sibling(s) or half-sibling(s) are now considered to be adult relatives for whom the LDSS must exercise due diligence to identify and provide notification of the child's removal and explain the options under which the sibling's parent(s) may provide care of the child through foster care or direct legal custody or guardianship, including kinship guardianship assistance, and any options that may be lost by failure to respond timely to the notification [see also 18 NYCRR 430.11(c)(4)]. See 15-OCFS-ADM-01 for more information on the notification requirement.

Below is the Sibling Parent Notification Letter (Model Letter). The letter contains a brief description of KinGAP, as KinGAP may later become a viable permanency option. See policy 18-OCFS-ADM-03. LDSS may use this model or develop their own notification letter, so long as it includes information on KinGAP. A Spanish version is available online.

OCFS also requires that a copy of Know Your Permanency Options: The Kinship Guardianship Assistance Program (Pub. 5108) be given. (See 18-OCFS-ADM-03).

Sample letter

[Date]

[Sibling Parent Name]
[**Street Address**]
[**City, ST ZIP Code**]

Dear **[Sibling Parent Name]**:

My name is **[Caseworker's Name]** and I am a caseworker for **[LDSS/agency name]** . I am working with the **[Family's Name]** family. Their child **[Child's Name],** who was born on **[DOB] ,** is now in the custody of **[LDSS/agency name]** . I am contacting you because your name was given to me as a parent of a sibling of **[Child's Name]** .

Brothers and sisters play an important role in the lives of children, especially those who are being temporarily cared for by someone other than their parents. They are part of a child's family, and children most often do better when they are placed in the same home as or able to stay connected in other ways to their family.

I am contacting you to see if you are interested in being considered as a foster care placement resource for or otherwise staying in contact with **[child's first name] .** I would like to discuss with you your options for helping to care for **[child's first name]** . For example, you may want to offer a temporary home for **[child's first name]** so he/she does not need to be placed in foster care, or you may be interested in applying to be a foster parent for **[child's first name]** . Depending on the type of involvement you are interested in, there may be financial, medical, or other support available. Be aware, eligibility for programs or assistance described below, and the options

available for the child's permanency, can be impacted by the decisions made at the time of initial placement. You should be sure you understand these impacts. Please ask me any questions you may have about this process.

If permanent care for **[child's first name]** other than return to parent(s) becomes necessary, you may be interested in guardianship or adoption. New York State has both a kinship guardianship assistance program and an adoption subsidy program that relatives and certain non-relatives may be eligible for when they first serve as the foster parent to a child. Both programs provide financial support and in most cases medical coverage for the child until the child reaches the age of 18, or in some cases 21. Please review the materials enclosed with this letter for more information about placement options and contact me if you have questions.

Please contact me as soon as possible so I can assist you with reviewing all the options and providing you with any forms or applications you may need. I may be reached at **[phone number]** . I also ask that you share with me names and contact information of other relatives you think may be interested in connecting with or being a resource for **[child's first name]** .

Thank you, and I look forward to hearing from you.

Sincerely,

[**Your Name**]

[**Title**]

8. Non-relative notification letter

Chapter 384 of the Laws of 2017, otherwise known as "KinGAP Expansion", expanded eligibility for KinGAP to include certain non-relatives of a child. Such persons are adults who have been caring for a child in foster care for 6 months or more, and:

- are related by blood, marriage or adoption to a half-sibling of the child, and are also the prospective or appointed relative guardian of such half-sibling, or
- have a positive relationship with the child that was established prior to the child's current foster care placement.

See 18-OCFS-ADM-03 for more information.

After a child's removal, the court will direct the LDSS to identify and notify relatives and any suitable persons identified by any respondent parent or non-respondent parent and inform them of the options for taking custody [see §1017 FCA]. Such suitable persons include non-relatives who may, should they decide to care for the child through foster care, become eligible for KinGAP. Therefore, OCFS has developed a model notification letter for non-relatives that includes information about KinGAP. LDSS may use this model or develop their own notification letter, so long as it includes information on KinGAP. A Spanish version is available online.

OCFS also requires that a copy of *Know Your Permanency Options: The Kinship Guardianship Assistance Program* (Pub. 5108) be given (see 18-OCFS-ADM-03).

Sample letter

[Date]

[Potential Placement Resource Name]
[Street Address]
[City, ST ZIP Code]

Dear [**Potential Placement Resource Name**]:

My name is [**Caseworker's Name**] and I am a caseworker for [**LDSS/agency name**]. I am working with the [**Family's Name**] family. Their child [**Child's Name**], who was born on [**DOB**] , is now in the custody of [**LDSS/agency name**]. I am contacting you because your name was given to me as a person with a significant connection to [**Child's Name**] .

Children dealing with change rely on the support of adults they know and trust, particularly when those children are being temporarily cared for by someone other than their parents. Children do better when they are placed or able to stay connected in other ways to people who know and care about them.

I am contacting you to see if you are interested in being considered as a placement resource for or otherwise staying in contact with [**child's first name**] . I would like to discuss with you your options for helping to care for [**child's first name**] . For example, you may want to offer a temporary home for [**child's first name**] so he/she does not need to be placed in foster care, or you may be interested in applying to be a foster parent for [**child's first name**] . Depending on the type of involvement you are interested in, there may be financial, medical, or other support available. Be aware, eligibility for programs or assistance described below, and the options available for the child's permanency, can be impacted by the decisions made at the time of initial placement. You should be sure you understand these impacts. Please ask me any questions you may have about this process.

If [**child's first name**] is unable to be returned to the care of their parent(s), you may be interested in guardianship or adoption. New York State has both a kinship guardianship assistance program and an adoption subsidy program that caregivers may be eligible for when they serve first as the foster parent to a child. Both programs provide financial support, and in most cases medical coverage for the child until the child reaches the age of 18, or in many cases 21. Please review the materials enclosed with this letter for more information about placement options and contact me if you have questions.

If you are not able to provide a home for [**child's first name**] , there are other ways for you to stay involved in his/her life and offer important family connections. You might visit regularly, arrange weekend or holiday visits at your home, otherwise keep in contact or offer support to the child or family.

Please contact me as soon as possible so I can assist you with reviewing all the options and providing you with any forms or applications you may need. I may be reached at [**phone number**]. I also ask that you share with me names and contact information of other people you think may be interested in connecting with or being a resource for [**child's first name**] .

Thank you, and I look forward to hearing from you.

Sincerely,

[**Your Name**]
[**Title**]

C. Alternative notice of existence of report letters

There have been changes to several written communications that CPS is required to provide to persons who are the subject of a report of alleged child abuse or maltreatment that are accessible in CONNECTIONS, such as the “notice of existence,” “notice of indication,” and “notice of unfounding” letters. These letters have been revised to reflect the changes in the law and so that the information provided to the subject of the report is conveyed in plain language. LDSS staff are required to use the revised letters for investigations where the report of alleged child abuse or maltreatment is accepted by the SCR on or after January 1, 2022. Translated versions of these updated letters will also be available on the OCFS intranet and/or website.

D. Notice of child custody proceeding for Native American child

It is necessary to determine at the outset of any court proceeding subject to the Indian Child Welfare Act (ICWA) whether ICWA applies to the child. This promotes stability for the Indian child and the family, and reduces the need for delays and disruptions in the placement decisions for the child. Any child believed to be a Native American child must be treated as such, unless and until it is determined that the child is ***not*** a Native American child.

If there is 'reason to know' in a child custody proceeding that a child is a member or citizen of a tribe/nation, the LDSS must notify the Family Court of this in writing. The LDSS then must notify by either certified or registered mail return receipt requested the tribe(s)/nation(s), parent(s), and, where applicable, any Native American custodian of the scheduled court proceeding and of their rights under ICWA. A copy of this letter must also be sent to the Bureau of Indian Affairs' (BIA) eastern regional director. If the identity or location of the parent, Native American custodian or the tribe/nation cannot be determined, the notice must also be sent to the OCFS Bureau of Native American Services. For more information please see 21-OCFS-ADM-02 and 17-OCFS-ADM-08.

REGISTERED OR CERTIFIED MAIL/RETURN RECEIPT REQUESTED

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

Docket # _____

[Parent Address] [Indian Custodian Address] [Tribe/Nation Address] [Eastern Regional Director Address] [OCFS Native American Services Address]

Dear [parent] [Indian custodian] [Tribe/Nation] [Eastern Regional Director] [OCFS Special Assistant for Native American Services]

Pursuant to the federal Indian Child Welfare Act (25 U.S.C. §1912), the _____ Department of Social Services/Administration for Children's Services, as petitioner in the above proceeding, is giving notice of (check appropriate box)

( ) an involuntary foster care placement proceeding, or

( ) a termination of parental rights proceeding

now pending in the court named below for the following child(ren) (**add additional sheets if additional children are involved**):

Name of Child: _____ DOB: _____

Place of Birth: _____

Name of Child: _____ DOB: _____

Place of Birth: _____

A hearing ( ) has not yet been scheduled or ( ) has been scheduled for:

Date: ___/___/____ Time: ___: __ am/pm

Before the Honorable _____, Judge

Address: _____

Telephone number: _____

The petitioner's attorney:

Name: _____

Address: _____

Phone: _____

A copy of the petition, complaint, or other document filed with the court to initiate the child custody proceeding is attached to this notice.

Rights of Parents, Indian Custodians, and Tribes

- The parent(s) or Indian custodian, if not already a party to the child custody proceeding, has the right to intervene at any point in this proceeding.
- The Indian child's tribe/nation has the right to intervene at any time in a court proceeding for either the foster care placement (exclusive of a juvenile delinquent proceeding) or termination of parental rights involving an Indian child.
- If the Indian child's parent or Indian custodian is unable to afford legal counsel based on a determination of indigency by the court, it is the right of the parent or the Indian custodian to have court appointed counsel.
- The parent or Indian custodian and tribe/nation have the right to be granted, upon request, up to 20 additional days to prepare for the child custody proceedings.
- The parent(s) or Indian custodian and the tribe/nation have the right to petition the court to transfer this proceeding to the tribal court as provided by the Indian Child Welfare Act (25 U.S.C. §1911) and federal regulation (25 CFR §23.115).
- All parties must keep confidential the information contained in this notice, and this notice should not be handled by anyone not needing the information to exercise rights under the Indian Child Welfare Act.
- Be advised that the above referenced proceeding may have significant legal consequences on the future visitation, custodial, and parental rights of the parent or Indian custodian of the child(ren) referenced above.

Tribal Membership and Ancestry of the Indian Child

Complete all known information below regarding tribal membership and ancestry of the Indian child.

If the name and/or location of the Indian child's parent(s), Indian custodian, and/or tribe/nation are unknown, check the 'Request for Assistance' section. This notice must be sent to the Bureau of Indian Affairs and the OCFS Bureau of Native American Services.

( ) Request for Assistance in the Identification or location of child's parent, Indian Custodian, and/or Tribe/Nation:

The petitioner is requesting assistance because we are not able to identify or locate the Indian child's parent(s), Indian custodian, and or Indian tribe/nation. Therefore, in accordance with 25 CFR §23.111(e) and 18 NYCRR 431.18(c) the _____ Department of Social

Services/Administration for Children's Services is hereby requesting the assistance of the Bureau of Indian Affairs and the New York State Office of Children and Family Services in the location and identification of the Indian child's parent or Indian custodian, and/or the child's Indian tribe/nation. The information available to date is provided below.

The child is or may be a member/citizen (or the biological child of a member/citizen) of the following Indian tribe(s)/nation(s): (List each tribe/nation below)

_____ _____

_____ _____

Indian Custodian (if applicable)

Name: _____

Address: _____

Telephone Number: _____

Biological Mother	**Biological Father**
Name (including maiden, married, and former names and aliases):	Name (including maiden, married, and former names and aliases):
Address:	Address:
Birth Date and Place:	Birth Date and Place:
Tribe and Location:	Tribe and Location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:
If known, Mother's Biological Mother (Child's Maternal Grandmother)	**If known, Father's Biological Mother (Child's Paternal Grandmother)**

Name (including maiden, married, and former names and aliases):	Name (including maiden, married, and former names and aliases):
Address:	Address:
Birth Date and Place:	Birth Date and Place:
Tribe and Location:	Tribe and Location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

If you need additional information, please call _____ at _____. Your earliest response would be most appreciated.

Respectfully,

Caseworker: _____

Attorney: _____

cc: New York State Office of Children and Family Services
Bureau of Native American Services
295 Main Street
Buffalo, New York 14203

Bureau of Indian Affairs
Eastern Regional Director
545 Marriott Drive, Suite 700
Nashville, Tennessee 37214

Attachment(s)

E. Definitions of allegations related to child abuse and maltreatment

The following definitions are descriptive and not all-inclusive. Determinations of child abuse and/or maltreatment are made on a case-by-case basis. The "immediate considerations" which follow each definition statement are listed to structure the collection of facts and the organization of information in the *initial* investigation, immediately following the receipt of the report. These considerations are not a substitute for full and detailed fact-gathering and assessment of the child(ren) and family.

For each situation the caseworker must carefully obtain current facts and related history, and apply these facts and history to the statutory definitions contained in SSL §412 and FCA §1012 to see whether child abuse or maltreatment has occurred.

Such facts as the age of the child, the type, severity, frequency of harm or danger of harm, and the acts or omissions of the parent or person legally responsible for the child's care must be thoroughly assessed in every case. All children in the family setting must be evaluated not just the child who is named in the report of abuse or maltreatment.

1. Fractures

A fracture is a break in a bone. Common types are:

- *chip fracture,* a small piece of bone is flaked from the major part of the bone;
- *comminuted fracture,* the bone is crushed or broken into a number of pieces'
- *compound fracture*, fragments of bones protrude through skin;
- *simple fracture,* bone breaks without wounding surrounding tissue;
- *spiral fracture,* the line of the fracture is twisted encircling the bone; and
- *torus fracture,* a folding, bulging, buckling fracture.*

Medical examination is necessary to determine the nature and extent of the injury. In cases of fractures, diagnosis depends on the result of x-rays. It is essential that adequate x-ray films be obtained and interpreted by a qualified medical professional.

Qualified interpretation of the initial x-ray of an *epiphyseal fracture* often involving growing bones of the arms or legs, is particularly important. An epiphyseal fracture is an injury to the epiphyses, a part or process of a bone which is separated from the main body of the bone by a layer of cartilage. The epiphyses become united with the bone through further growth of bony tissue (callus). Because the fracture has occurred through cartilage, little can be noted from the initial x-ray examination, aside from extensive tissue swelling. By the tenth day following the initial injury, build-up of callus will demonstrate the extent and magnitude of the injury. These injuries can lead to abnormal growth and permanent deformities.

In general, the major causes of bone fractures in childhood are falls, injuries while playing or engaging in athletic activities or while moving heavy objects or equipment, or car/bicycle accidents. Frequent sites of fractures are: the clavicle (collar bone), humerus (the long bone in the arm which extends from the shoulder to the elbow), the forearm, the elbow, femur (the thigh bone) and fingers. During periods of rapid growth, children may sustain fractures of long bones from minor twists or sprains. For example, the shinbone is susceptible to spiral fracture in children between the ages of two and five years; however, spiral fractures are unlikely to occur to children who are not yet ambulatory. In the growing child, fractures of the skull, the pelvis, neck, thigh bone, and spine occur from major trauma.** Fractures that are suggestive of abuse include rib fractures, metaphysical chip or corner fractures, long bone fractures in a pre-

ambulatory child, scapular, sternal or spinous process fractures without a history of severe trauma, multiple fractures in different stages of healing, multiple skull fractures, and healing fractures without a consistent time of injury. ***

Bone fractures which are unexplained, or where the reason given for the fracture is inconsistent with the nature of the injury, may be indicators of child abuse or maltreatment. Nelson's *Textbook of Pediatrics* (Sixteenth Edition) recommends when physical abuse is suspected in a child younger than two years, a radiologic bone survey consisting of multiple views of the skull, thorax, long bones, hands, feet pelvis, and spine is necessary. For children two-four years of age, a bone survey is indicated unless the child is adequately verbal, has very minor injuries or was in a witnessed and supervised setting (e.g. preschool) when injured. For verbal children older than four or five years, a bone survey needs to be obtained only if there is bone tenderness or a limited range of motion on physical examination.

* *Interdisciplinary Glossary on Child Abuse and Neglect* (US Government Printing Office DHEW Publication No. (OHDS) 78-30137) page 34.

** This paragraph summarizes major issues discussed by John C. Wilson, M.D. in "Fractures and Dislocations in Childhood" *Pediatric Clinics of North America* (Vol., 14, No.3, August 1976).

*** *Recognition of Child Abuse for the Mandated Reporter (Third Edition) (2002*) A.P. Giardino, M.D., Ph.D.; E.R. Giardino, Ph.D., R.N., C.R.N.P.) page 12.

► *Immediate considerations*

- Were adequate x-ray films obtained and what were the findings?
- Was a detailed physical examination performed and what were the findings? If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the fracture? What were the results? Identify professionals by name, professional title and address.
- Were the child and family interviewed concerning the history and explanation of the fracture, and is the explanation consistent with the type and location of the fracture and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent's/other person legally responsible's control over the child at the time of the injury and during the events leading to the injury?

2. Internal injuries

There are four major categories of internal injuries. Medical examination is necessary to determine the nature and extent of these injuries.

1. **Injuries to the Face**

   The eyes are particularly sensitive organs and blunt trauma to the eye can cause hemorrhages, dislocate the lens or detach the retina. A direct blow to the nose may cause bleeding, swelling or deviation of the bone. Blows to the mouth may result in swelling, lose or missing teeth. Abuse/maltreatment-related injuries to the ear include twisting injuries of the lobe and bruises, ruptures or hemorrhaging.

2. **Injuries to the Head and Nervous System**

   Injuries to the head are especially serious because they may injure the brain. Head injuries may result from sharp blows or severe shaking especially of infants.

Trauma to the spinal cord may cause damage to motor nerves and lead to paralysis of muscles. Other signs of head or nerve injury are loss of consciousness, seizures, numbness in the arms or legs or increased drowsiness; however, it must be remembered that an unconscious child may be suffering from the effects of medication or poison.

Injuries to the head may also be caused by hair pulling. Bald patches on the head interspersed with normal hair may be evidence of such injury; however, medical examination is necessary to examine the extent of the injury and rule out other causes.

3. **Subdural Hematomas**

   A subdural hematoma is an accumulation of blood in the space between the outermost covering of the brain and covering of the brain. In many cases there is no associated skull fracture or bruising or swelling on the site of the injury. In the acute form, there is direct injury to the brain. In the chronic form, there is a gradual accumulation of blood resulting in headaches, progressive stupor, muscular weakness affecting one side of the body, and other symptoms which may appear weeks after the injury. This injury can be caused by a sharp blow to the head or the severe shaking of an infant (see - CHOKING, TWISTING, SHAKING). With infants, the only sign of injury may be coma or seizure.

4. **Abdominal Injuries**

   Signs of abdominal injury include recurrent vomiting, swelling and tenderness. A blow or other trauma may also injure other organs such as the liver and kidney.

   Forceful blows to the abdomen may also cause bruises and ruptures resulting in hemorrhage, shock or death.

► *Immediate considerations*

- Was a detailed physical examination performed and what were the findings?
- If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? What were the results? Identify professionals by name, professional title and address.
- Was the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent’s/other person legally responsible’s control over the child at the time of the injury and during events leading to the injury?

3. Lacerations / Bruises / Welts

Lacerations are jagged cuts or tears in the skin. The presence of multiple skin injuries in various stages of healing may be indicators of child abuse or maltreatment. Medical examination is needed to determine the nature and extent of these injuries. Skin injuries, such as scars or other disfigurements often resemble the shape of the instrument used: strap marks, belt buckles, looped cords, choke marks on the neck, bruises from gags, rope burns, or blisters especially around the wrists or ankles.

Welts are raised ridges on the skin, often seen in the lower back area and are usually left by a slash or blow. Skin injuries of this nature may also be due to scraping or rubbing.

Human bite marks are distinctive crescent shaped lines of tooth imprints. A child's bite can be distinguished from an adult's by the larger size of the arch of the crescent. Human bites compress flesh causing bruises; animal bites normally tear the flesh.

Bruises are caused by bleeding beneath the skin without tearing it. They may often be fingertip in size and distribution. Old and multiple new bruises, and/or bruises on the face/back of legs are suspicious. Bleeding disorders might be the reason for the child's bruises. This is not common, but needs to be ruled out by medical tests. The caseworker must be constantly mindful that some bruises are a normal occurrence in growing children and care must be taken to assess the situation fully. Medical examination is needed to determine the nature and extent of these injuries.

▶ *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- Has the physician recorded a precise description of the injury including age of the injury, location of the body, color, and whether other injuries were evident?
- If child abuse or maltreatment is suspected, have color photographs been taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? Identify professionals by name, professional title, and address.
- Were the child and the family interviewed concerning the history and explanation of the injury, and it is consistent with the type and location of the injury and the child's age and condition? Good note-taking is essential. Use direct quotes.
- What was the extent of the parent’s/other person legally responsible’s control at the time of the injury and during events leading to the injury?

4. Swelling / Dislocations / Sprains

Swelling at points where two bones join, tenderness at the ankles, wrists or other joints are signs of skeletal injuries without fracture. A child's ability to walk is limited by such injuries to the legs.

If a child's leg or arms are pulled or jerked or twisted suddenly or forcibly, a bone can be put out of position (dislocation), or the ankles and wrists or other parts of the body at a joint can be sprained. Medical examination is necessary to determine the nature and extent of these injuries.

▶ *Immediate considerations*

- Were adequate x-ray films obtained? What were the results?
- Was a detailed physical examination performed and what were the findings?
- If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? Identify professionals by name, professional title and address.
- Was the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent’s/other person legally responsible’s control over the child at the time of the injury and during events leading to the injury?

5. Choking / Twisting / Shaking

Twisting and shaking children can produce serious injuries. Twisting injuries to the ear can cause injuries to the earlobe; in cases of sexual abuse, genitals may be injured by twisting.

Repeated or forcible twisting of a child's arms or legs can result in a spiral bone fracture. Violent shaking can cause injury to the brain or spinal column; repeated blows and shaking can cause hemorrhages and swelling.

Choking occurs by compression of the child's windpipe which stops breathing. Hands or cords or long scarves placed on the neck can cause such compression if pressure is applied. Suffocation can result when a foreign body or object such as food (peanuts, chicken bones), coins, safety pins, plastic bags, or balloons become lodged in the windpipe. Infants between 6 to 12 months are particularly likely to place things in their mouths; any child under six years of age should receive close supervision when near foreign objects which could be swallowed (see LACK OF SUPERVISION). Medical examination is necessary to determine the nature and extent of these injuries.

► *Immediate considerations*

- Was a detailed physical examination performed and what were the findings?
- If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? What were the results? Identify professionals by name, professional title and address.
- Was the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent’s/other person legally responsible’s control over the child at the time of the injury and during events leading to the injury?

6. Burns / Scalding

Damage to skin tissue is caused by direct contact with heat, hot liquid, chemicals, vapor, or fire. Burns of the first degree show redness; in the second degree, blistering; and in the third degree, destruction of the skin tissue. These signs vary with the skin color of the child.

Burn features suggestive of abuse or maltreatment include glove or stocking burns, doughnut burns, burns in a geometrical shape, scald burns on the back, burns on the buttocks or genital areas, burns on the back of the hands, contact burns involving both palms, cigarette burns, burns in multiple locations, and burns on areas typically protected by clothing (Recognition of Child Abuse for the Mandated Reporter (Third Edition) (2002) (A. P. Giardino, M.D., Ph. D.; E. R. Giardino, Ph.D., R.N., C.R.N.P.) page 11). Rope burns often occur on the ankles, wrist or neck. In suspected cases of abuse or maltreatment, cigarette burns most often appear on the hands, feet and buttocks. Care must be used in distinguishing cigarette burns from impetigo, a contagious skin disease marked by small elevations of the skin containing pus. Scaldings may result from an act or an omission of parent such as failure to supervise the child. Scaldings may also be inflicted as punishment, such as immersion in hot water. Medical examination is necessary to determine the nature and extent of the injury. Color photographs should be taken in suspected cases of child abuse and maltreatment.

▶ *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- Has the physician recorded a precise description of damage to the skin tissue including age of the injury, location, degree of damage, color and whether any other injuries were apparent?
- If child abuse or maltreatment is suspected, have color photographs of the visible trauma been taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? Identify professionals by name, professional title and address.
- Were the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent's/other person legally responsible's control at the time of the injury and during events leading to the injury?

7. Poisoning / Noxious substances

Prescribed medication, non-prescribed medication, household cleaning products, oils, paint thinners, fuels, fertilizers, and some house plants are among the materials which can cause serious harm if ingested by a child. The total circumstances must be considered, but certain components are key in evaluating whether child abuse or maltreatment is present:

- Age of the child;
- Location of the noxious substance;
- Way in which the substance is stored and labeled (for example, is it placed in a locked cabinet or out of reach of the child);
- Other steps the parent takes to guard against access by a child;
- Actions taken to seek care for the child;
- Previous incidents and pattern of care.

Certain poisonings or the ingestion of other harmful substances by a child may be due to acts of a parent or other person legally responsible, or caused by omissions in supervising the child. If the child is an infant, intentional poisoning should be considered. Medical examination is necessary to determine the nature and extent of the injury.

▶ *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- What is the age and capacity of the child?
- Was a discussion held with medical professionals concerning their opinion as to the nature and cause of the child's condition? Identify professionals by name, professional title and address.
- Were the child and family interviewed concerning the history and explanation of the incident? Good note taking is essential. Use direct quotes.
- What was the extent of the parent's/other person legally responsible's control of the child at the time of incident and during events leading to the incident?

— Did the parent perceive danger to the child and take steps to prevent harm to the child? What steps were taken?

— What actions were taken by the parent after the incident?

8. Excessive corporal punishment

Excessive corporal punishment constitutes maltreatment. Corporal punishment is excessive if it goes beyond what is objectively reasonable. In assessing what is reasonable, the following are critical to consider:

- The child's age, sex, physical and mental condition, and capacity to understand correction;
- The nature of the punishment;
- The seriousness of injury to the child or risk of serious injury;
- The means of punishment used - is it appropriate to correct the child's behavior are less severe alternatives available;
- The purpose of the punishment;
- The child's behavior which requires correction;
- The character of the punishment, whether it is degrading or brutal;
- Duration of punishment, whether it is protracted beyond the child's endurance.

▶ *Immediate considerations*

— Has a complete and detailed physical examination been performed? What were the results?

— Are there any visible signs of injury to the child's body? Has the physician recorded a precise description of the injury, including age of the injury, location on the body, color, other injuries which have healed, and diagnosis? If child abuse or maltreatment is suspected have color photographs been taken?

* The use of *reasonable* corporal punishment by a parent or other person legally responsible is permissible pursuant to Penal Law § 35.10; however, corporal punishment of children in care of authorized agencies is prohibited by New York State OCFS regulation 18 NYCRR 441.9.

— What is the child's capacity to understand correction?

— Were the child and family interviewed concerning the history, purpose and reason for punishment? Good note taking is essential. Use direct quotes.

— What was the character and means of punishment and how long did it last?

9. Parent's drug / Alcohol misuse

The misuse of legal or illegal drugs or alcohol by a parent or other person legally responsible for the care of a child can result in harm or imminent danger of harm to a child's physical, mental or emotional condition. The key issue to determine is whether the parent has misused a drug or drugs or alcoholic beverage to the extent that they lose self-control of their actions and is unable to care for the child, has harmed the child, or is substantially likely to harm the child. The fact that the parent or person legally responsible is voluntarily and regularly participating in a rehabilitative program is irrelevant in assessment of whether child abuse or maltreatment has occurred if the child's physical, mental or emotional condition has been impaired or is in imminent danger of impairment due to the parent's acts or omissions.

Evidence that a newborn infant tests positive for a drug or alcohol in its bloodstream or urine; is born dependent on drugs or with drug withdrawal symptoms; demonstrates fetal alcohol effect or fetal alcohol syndrome; or has been diagnosed as having a condition which may be attributable to in utero exposure to drugs or alcohol is not sufficient, in and of itself, to support a determination that the child is abused or maltreated. In addition, such evidence alone is not sufficient for a social services district to take protective custody of such a child.

In making a decision to register a report of suspected child abuse or maltreatment when the allegations involve a positive toxicology of an infant, the SCR should not register a report based on an infant's positive toxicology if the infant's birthing parent is compliant with a drug treatment program or is under the care and supervision of a doctor and is using the drugs as prescribed and is demonstrating an ability to care for the infant. Also, the SCR should not register a report if the **only** reported concern is that an infant tests positive for the presence of cannabis or alcohol without a demonstrated effect on the infant. [*]It is important to note, however, that if the caller provides a reasonable cause to suspect that a child's physical, mental, or emotional condition has been harmed or is at risk of being harmed by a parent and/or PLR, the SCR will register a suspected child maltreatment report.

Upon the receipt of a report where parental drug or alcohol misuse is alleged, the social services district must conduct a thorough investigation to determine whether such misuse creates a risk to the child. The district must assess the ability of the parent to care for the child. The district must examine, in particular, the parent's plans for the care of the child and his/her ability to carry out those plans to determine whether the parent's drug or alcohol use creates a condition which places the child's physical, mental or emotional condition in imminent danger of becoming impaired. In the case of a newborn infant born to a drug or alcohol abusing parent, any special needs of such infant should be considered in the district's assessment of parental capability.

▶ Immediate considerations

- What is the child's physical, mental, or emotional condition? Has the child been harmed or in imminent danger of harm?
- What is the parent's/other person legally responsible's explanation for these conditions? Good note taking is essential. Use direct quotes.
- What are the results of medical examination concerning the parent's drug or alcohol use?
- What is the parent's/other person legally responsible's capacity to exercise a minimum degree of care to meet the child's physical, mental and emotional needs?

10. Child's drug / Alcohol use

The use of drugs or alcohol can cause serious harm to a child's mental and physical development, or place the child in imminent danger of harm.

To be considered child abuse or maltreatment, a child's use of drugs or alcohol needs to be a result of:

- A quantity sufficient to cause harm or imminent danger of harm to the child's physical development, or mental health; and

[*] (2022, OCFS) "*Change in the New York Statewide Central Register's Intake Procedures Related to Adult-Use Cannabis"* (22-OCFS-INF-03).

- Parental failure to exercise a minimum degree of care in preventing the child's use of this quantity of drugs or alcohol (see **Lack of Supervision**) or encouraging or providing the child's use of this quantity of drugs or alcohol.

Parental actions in the wrongful administration of legally prescribed drugs or failure to administer prescribed drugs to the child which create or allow to be created a substantial risk of physical injury or impaired condition or imminent danger of impaired condition may also indicate abuse or maltreatment. (see **Inadequate Guardianship**)

► *Immediate considerations*

— What is the age and physical and mental condition of the child?
— What is the type, quantity, and quality of drug or alcohol involved? How long has this behavior been continuing? Have the parents been aware of these activities?
— What was the effect of the drug/alcohol use on the child?
— What was the extent of the parent's/other person legally responsible's control over the child at the time of the incident and during events leading to the incident?
— What is the parent's explanation? Good note taking is essential. Use direct quotes.
— Did the parent's/other person legally responsible's actions meet the minimum degree of care needed by the child?

11. Lack of medical care / Medical neglect

A parent or other person legally responsible for the child must supply adequate medical, dental, optometrical or surgical care if financially able to do so or offered financial or other reasonable means to do so.

This includes:

- Seeking adequate treatment for conditions which impair or threaten to impair the child's mental, emotional or physical condition;
- Following prescribed treatment for remedial care including psychiatric and psychological services;
- Obtaining preventive care such as post-natal check-ups, and immunizations for polio, mumps, measles, diphtheria and rubella.

The parent's failure to seek or follow adequate treatment or desire to select an unconventional form of treatment must be considered in light of:

- The seriousness of the child's condition and risk of further harm to the child
- The parent's awareness of the child's condition and risk of further harm to the child;
- Whether the parent has sought accredited medical opinion;
- The consensus of responsible medical authority regarding treatment;
- Whether the parent's failure to seek adequate treatment or select an unconventional form of treatment impairs the child physically or emotionally;
- Whether the parent fails to seek adequate treatment despite financial or other reasonable means to do.

Article 10 of the Family Court Act authorizes intervention not only in life and death emergencies, but also in situations where a child is denied adequate medical, dental, optometrical, or surgical care due to the parent's or person legally responsible's failure to provide "an acceptable course

of medical treatment for their child in light of all the surrounding circumstances. The court's inquiry should be whether the parents, once having sought accredited medical assistance, and having been made aware of the seriousness of their child's affliction, and the possibility of cure if a certain mode of treatment is undertaken, have provided for their child a treatment which is recommended by their physician, and which has not been totally rejected by all responsible medical authority." *In the Matter of Hofbauer*, 47 N.Y. 2d 648, 393 N.E. 2d 1009, 419 N.Y.S. 2d 936 (1979).

The same test applies in cases in which a parent objects to medical treatment based on religious belief. The focus must be whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. A child who has been harmed or who is in imminent danger of harm, as a result of a parent's failure to supply adequate medical, dental, optometrical, or surgical care, although financially able to do so or offered reasonable means to do so is a neglected child. *In the Matter of Greqorv S. et al*, 85 Misc. 2d 845, 380 N.Y.S. 2d 620, (Fam. Ct., Kings Co. 1976)

▶ *Immediate considerations*

- In the opinion of accredited medical professionals, what is the nature and extent of the child's condition?
- Did the parent/other person legally responsible seek accredited medical assistance for the child?
- What do responsible medical authorities prescribe as the recommended form of treatment? Identify authorities by name, professional title and address.
- What is the parent's/other person legally responsible's explanation for his or her course of action? Have inadequate finances blocked parental ability to obtain treatment? Good note taking is essential. Use direct quotes.
- Has the child's condition been impaired by the parent's/other person legally responsible's actions or failures to act?

12. Educational neglect

Each minor from six to 16 years of age must attend full-time day instruction from the first day that school is in session in September of the school year in which he/she becomes six years of age. Exceptions include: a minor who has completed a four-year high school course of study and a minor for whom application for full-time employment certificate has been made and who is eligible therefore may, though unemployed, be permitted to attend part-time school not less than 20 hours per week instead of full-time school. In addition, in each school district, the board of education has the power to require minors from 16 to 17 years of age who are not employed to attend full-time day instruction until the last day of session in the school year in which the student becomes 17 years old. (Education Law §3205)

A minor may also be exempted from attendance where there are sufficient grounds to prove that his/her physical or mental condition would endanger the health or safety of the minor or that of others. Determination of mental or physical condition shall be based upon actual examination made by a person or persons qualified by appropriate training and experience, in accordance with the regulations of the State Education Department. If the child's mental or physical condition, by virtue of which the child is not required or permitted to receive instruction, is due to a mental or physical condition which may be corrected by the taking of reasonable measures, such mental or physical condition justifies only the temporary failure of the child to attend instruction (Education Law § 3208). Regular attendance is required, in accordance with the regulations of the State Education

Department. Absences from required attendance shall be permitted only for causes allowed by the general rules and practices of the public schools and for religious observance and education as the Commissioner of Education establishes (Education Law §3210).

A minor may attend instruction at a public school or elsewhere; however, the course of study is prescribed by rule and regulation (Education Law §3204). If home instruction is provided, the burden is on the parent to show that home instruction is substantially equivalent to minors of like age and attainments at public school. "Substantially equivalent" means equal in worth or value, meeting essential and significant elements and correctly covering the subject matter for the required courses.

A child with a disability means a person under the age of 21 who is entitled to attend public schools and who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education. (Education Law §4401)

To be considered educational neglect, the following must be present:

- Unexcused absence from full-time instruction; or
- The course of study provided to the minor does not comport to requirements of State Education Law; and
- The parent's or legally responsible person's failure to exercise care in enrolling or facilitating school attendance (not the child's desire to be truant);
- The school notifies the parent or person legally responsible regarding unexcused absences.
- The parent's or legally responsible person's failure to cooperate in obtaining a special educational plan for a child, when such a plan is recommended and provided by the school district.
- The child's education has been impaired or harmed or there is imminent danger of such impairment or harm.

► *Immediate considerations*

— What is the reason for the child's absence from school? Both child and parent should be questioned. Good note taking is essential. Use direct quotes.

— Is this absence permitted by the general rules and practices of the public schools or as the Commissioner of Education establishes?

— What steps did the parent or other person legally responsible take to insure the child's attendance?

— Did the school notify the parent or other person legally responsible of the child's absence?

— If the child's place of instruction is at home or elsewhere, is the child receiving substantially equivalent instruction to minors of like age and attainment in public schools?

— Do school district records indicate that the child(ren) are on home instruction? (It may assist in investigating a report alleging educational neglect to contact the school district prior to visiting the home. This is especially the case when the source of the report is not a school official.)

— What steps did the parent or other person legally responsible take to insure that a special educational plan was established for the child?

- Is the child in imminent danger of educational impairment or has educational impairment occurred?

13. Emotional neglect

To establish emotional neglect, there must be evidence of substantially diminished psychological or intellectual functioning in the child *and* this condition is attributable to the parent's/other person legally responsible's conduct.

Three factors are present:

- Parental (person legally responsible) pattern of behavior has a harmful **effect** on the child's emotional health and well-being.
- The effect of emotional neglect can be **observed** in the child's abnormal performance and behavior.
- There is **substantial impairment** to the child's ability to function as a normal human being — to think, to learn, to enter into relationships — **due to parent's/other person legally responsible's conduct.**

The child's emotional health and development may be substantially impaired in relation to, but not limited to, the following:

- *Control of aggressive or self-destructive impulses* – lack of control results in harm to the child and/or others. This is not an isolated incident, but an established pattern of behavior.
- *Ability to think and reason* – the child's intellectual or psychological functioning is impaired over a specific period of time.
- *Ability to speak and use language appropriately*.
- *Acting out or misbehavior* – incorrigibility, ungovernability, habitual truancy. These behaviors must be exhibited by the child over a significant period of time. They do not include responses to temporary, soon to be resolved, family stresses.
- *Other behavior* – extreme passive behavior, overly adaptive behavior, extreme social withdrawal, psychosomatic symptoms, severe anxiety.

Assessment of the child's emotional health should be conducted by a qualified professional. The psychological or psychiatric evaluation should specify the level of the child's dysfunction, and, to a reasonable medical certainty, whether the dysfunction is causally linked to the acts or omissions of the parent or other person legally responsible for the child's care. Failure to secure an assessment by a qualified professional may subject the district's determination to potential challenge.

A parent or other person legally responsible may be incapable of fulfilling a child's cognitive or emotional needs due to severe mental illness or mental retardation. The fact of mental illness or mental retardation alone does not establish emotional neglect by the parent or other person legally responsible. It must be shown that the parent's/other person legally responsible's mental illness or mental retardation results in impairment of the child's mental or emotional or physical condition.

► *Immediate considerations*

— What is the child's condition? What aspect of the child's emotional health and development has been substantially impaired?
— Was a discussion held with professionals concerning the child's condition and their opinion as to its nature and cause? Identify professional by name, professional title and address.
— What is the parent's/other person legally responsible's capacity to provide care for the child?

- What was the parent's/other person legally responsible's explanation for the child's condition? Good note taking is essential. Use direct quotes.
- Did the parent's/other person legally responsible's actions meet the minimum degree of care needed by the child?
- Is the child's impaired condition clearly attributable to the parent's/other person legally responsible's willingness or inability to exercise a minimum degree of care toward the child?
- How long has the child's impairment lasted? Has the condition stayed the same or become worse?

14. Sexual abuse

A "sexually abused child" is a child less than 18 years of age whose parent, or other person legally responsible for his/her care, commits or allows to be committed a sex offense against such child as defined by Penal Law §130. (FCA §1012 (e)(iii))

Sex offenses in Penal Law §130 include rape, sodomy, and any other non-consensual sexual contact. A "sexually abused child" is also a child less than 18 years of age whose parent, or other person legally responsible for his/her care allows such child to engage in incest, as set forth in Penal Law §§255.25, 255.26 and 255.27 or acts or conduct described in Penal Law §§230.25, 230.30 and 230.32 and article 263. These acts include using a child in a sexual performance and promoting a sexual performance by a child.

For all sex offenses, a person is deemed legally incapable of consent if less than 17 years, or mentally disabled, or mentally incapacitated, or physically helpless (Penal Law §130.05 (3)).

Sexual abuse includes situations in which the parent or other person legally responsible for the child's care *commits* or *allows to be committed*:

- Touching a child's mouth, genitals, buttocks, breast or other intimate parts for the purpose of gratifying sexual desire; or forcing or encouraging the child to touch the parent or other person legally responsible in this way for the purpose of gratifying sexual desire (Penal Law § 130).
- Engaging or attempting to engage the child in sexual intercourse, oral sexual conduct or anal sexual conduct (Penal Law § 255).
- Forcing or encouraging a child to engage in sexual activity with other children or adults (Penal Law § 230).
- Exposing a child to sexual activity or exhibitionism for the purpose of sexual stimulation or gratification of another (Penal Law § 263).
- Profiting from a child involved in prostitution (Penal Law § 230).
- Consenting to the child performing in a sexual performance (Penal Law § 263).

► *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- Was a discussion held with medical professionals concerning the condition of the child and their opinion as to the reason for the child's condition? Identify professionals by name and address.

- Was the child interviewed first and separately from the family? Was the family interviewed concerning the child's condition? Good note taking is essential. Use direct quotes.
- Were interviews conducted so that re-traumatization was minimized?
- What was the extent of parental control at the time of the alleged incident?
- Is retribution against the child likely as a result of disclosure?
- Has the appropriate law enforcement agency been contacted?

The following additional information is provided from an OCFS memorandum issued on March 24, 2010; which was updated in February 2017.

SUBJECT: Sex Abuse Reports – Definitions and Criteria

The purpose of the memorandum is to discuss what constitutes "sex abuse" in a child protective context. This memorandum will address the various elements of the provisions in the Penal Law (PL) that support a finding of sex abuse under the Social Services Law (SSL) and the Family Court Act (FCA). Included in this discussion is the identification of the age groupings that are found in various provisions of the PL.

For ease of use, the person who would be the subject of the report for SSL purposes, the respondent for FCA purposes and the defendant for PL purposes will be identified as the “actor” and the person against whom the act was committed, the “victim”. Also, for the purpose of this memorandum, the terms “actor” and victim” are gender neutral.

This memorandum may be used for general informational purposes.

Introduction

For child protective purposes, an abused child is defined as either:

- a child under the age of 18 not in “residential care,” as defined in SSL § 412-1 and who is defined as an abused child as defined in FCA § 1012(e).

  FCA § 1012(e) defines abused child and FCA § 1012(e)(iii) sets forth what constitutes sexual abuse. This definition applies to all child protective cases, except those involving children in residential care (i.e., cases of institutional abuse or neglect). In the interests of avoiding confusion, we will not otherwise discuss cases of institutional abuse or neglect in this memorandum.

  FCA § 1012(e) defines sexual abuse by cross-referencing to various provisions of the PL. The actions that constitute sexual abuse for child protective purposes occur where the actor:

- commits or allows to be committed a sex offense against the victim (child), sex offenses being defined in Article 130 of the PL;
- allows, permits or encourages an act described in PL §§ 230.25, 230.30 or 230.32, which statutes define the three degrees of the crime of promoting prostitution;
- commits an act described in PL §§ 255.25, 255.26 or 255.27, which statutes define the crime of incest; or
- allows the child to engage in an act or conduct described in Article 263 of the PL, which article defines offenses involving sexual performance by a child.

In the material that follows, we will discuss first the four types of sexual abuse listed above and will follow that with a discussion of what constitutes "allowing" sexual abuse to occur.

Types of sex abuse

For child protective purposes, it is a form of sex abuse if the actor commits any of the crimes described and discussed below. As an initial point, the PL definitions or criteria for some of the offenses addressed below include corroboration requirements (i.e., the testimony of the victim alone cannot be a basis for a conviction; something additional is necessary). Pursuant to FCA § 1012(e)(iii)(a), the corroboration requirements of the PL do not apply in child protective cases.

Sex Offenses—Article 130 of the PL

Article 130 of the PL defines thirteen categories of sex offenses. We will discuss each in turn. Several sex offense crimes have been added to the PL in the past decade. Some built on prior existing sex offense crimes for the purpose of increasing the punishment for their violation. As noted above, we will use the term "actor" to refer to the perpetrator, as that is the term generally used in the PL.

Rape is defined in PL §§ 130.25 (third degree), 130.30 (second degree) and 130.35 (first degree). The physical action in rape is sexual intercourse, which must involve some penetration, however slight, of the vagina by the penis (PL § 130.00(1)). Sexual intercourse falls within the definition of rape in the following circumstances:

1. the sexual intercourse occurs as a result of forcible compulsion;
2. the victim is incapable of consent due to being physically helpless (e.g., unconscious);
3. the victim is less than 11 years old (i.e. has not yet reached his or her 11th birthday);
4. the victim is at least 11 years old but less than 13 years old (i.e., has not yet reached his or her 13th birthday) *and* the actor is at least 18 years old;
5. the victim is at least 13 years old but less than 15 years old (i.e., has not reached his or her 15th birthday) *and* the actor is at least 18 years of age;
6. the victim, irrespective of age, is incapable of consent by reason of being mentally disabled or mentally incapacitated;
7. the victim is less than 17 years old (i.e., has not yet reached his or her 17th birthday) *and* the actor is at least 21 years old; or
8. the victim is incapable of consent by reason of some factor other than being under 17 years old, physical helplessness, mental disability or mental incapacity (e.g., intoxicated or under the influence of drugs).

Items 1 through 4 above are rape in the first degree, items 5 and 6 are rape in the second degree and items 7 and 8 are rape in the third degree. It is an affirmative defense for item 5 that the actor was less than 4 years older than the victim.

Criminal Sexual Act is defined in PL §§ 130.40 (third degree), 130.45 (second degree) and 130.50 (first degree). Criminal sexual act was formerly referred to as sodomy. The physical action in criminal sexual act is oral sexual conduct or anal sexual conduct, which involves contact between the penis and anus, the mouth and penis, the mouth and the anus or the mouth and vulva or vagina (PL § 130.00(2)). Oral sexual conduct and anal sexual conduct fall within the definition of criminal sexual act in the same circumstances as described above for rape; the only difference relates to the physical acts involved. Items 1 through 4 in the list are criminal sexual act in the first degree, items 5 and 6 are criminal sexual act in the second degree and items 7 and 8 are criminal sexual act in the third degree.

Note: New York's "consensual sodomy" statute (PL § 130.38), which formerly made consensual sodomy a sex offense, was repealed effective February 1, 2001.

Sexual Abuse as a specific crime under the PL (as opposed to the more generic sense that we tend to use the term to describe generally the whole range of sex offenses and sex-related forms of child abuse) is defined in PL §§ 130.55 (third degree), 130.60 (second degree) and 130.65 (first degree). The physical action in sexual abuse is subjecting another person to sexual contact.

Sexual contact is defined in PL § 130.00(3) as any touching of the sexual or other intimate parts for the purpose of sexual gratification of either party. It includes touching of the actor by the victim as well as the touching of the victim by the actor, directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

There are three aspects to the definition that require some further discussion. First is the question of what constitutes "touching". Touching means that there must be some form of physical contact; threats, gestures or other conduct that does not involve actual physical contact do not constitute sexual abuse (or any form of sex offense, for that matter). Please note also that the touching must involve the sexual or intimate parts of one of the participants but need not be both; the touching of the sexual or intimate parts can be by any portion of the body of the other participant. It is also important to note that the statute and cases provide that the touching can occur through clothing; flesh to flesh contact is not necessary for touching to occur.

Second is the question of what constitutes the sexual or other intimate parts. Although not specifically defined in statute, we can determine a fairly comprehensive list from the case law and analogizing to the other sex offense statutes. The parts in question include: the genitals; the buttocks; for a woman or girl, the breasts or chest; the mouth; the leg; the thigh; and, according to one case, the navel.

Third is the question of sexual gratification. The contact does not have to result in actual sexual gratification; it must be for the purpose of sexual gratification. The purpose does not have to be sexual gratification of both parties; this element is met if the actor seeks his or her own sexual gratification or seeks to stimulate sexual gratification in the victim. Although not set forth in statute, the case law addressing the issue of gratification shows that this element will be considered satisfied where the only reasonable purpose of the contact would be sexual gratification. Where the contact appears to be accidental or where there could be some other reasonable purpose for the contact (administering ointment, for example), there would have to be some more affirmative evidence of sexual gratification as a purpose.

The most common scenarios that would fall within sexual abuse as a sex offense would be cases involving fondling. However, other types of activity that fall within this definition include attempts at rape where contact occurs but there is no penetration of the vagina by the penis; digital penetration of the vagina or rectum where no physical injury is caused; and (according to one case) inserting the tongue into the victim's mouth against the victim's will (i.e., the unconsented French kiss is a form of sex abuse).

Like sexual intercourse, oral sexual contact or anal sexual contact, not all of the activity that can constitute sexual abuse, as described above, is a violation of the PL. Activity that would constitute sexual abuse is a violation of the PL in the following circumstances:

1. the activity constituting sexual abuse occurs as a result of forcible compulsion;
2. the victim is incapable of consent due to being physically helpless;
3. the victim is less than 11 years old;
4. the victim is at least 11 years old but less than 14 years old;

5. the victim is incapable of consent by reason of some factor other than being less than 17 years old;
6. the victim did not consent to the activity constituting sexual abuse, except where the victim's lack of consent is due to the victim being less than 17 years old, the victim is at least 14 years old, and the actor is less than five years older than the victim; or
7. the victim is less than 13 years old and the actor is twenty-one years old or older.

Items 1 through 3 and 7 above are sexual abuse in the first degree, items 4 and 5 are sexual abuse in the second degree and item 6 is sexual abuse in the third degree. Please note that, while items 1 through 5 are similar or identical to the analogous provisions of the rape and criminal sexual act statutes, item 6 uses different standards. Item 6 basically means that a victim under the age of 17 may not consent to activity that would constitute sexual abuse unless the victim is at least 14 years of age and the other party is less than five years older than the victim. For example, if a 14 year old willingly engages in activity that would fall within the definition of sexual abuse with a person who is 18 years old, it is not a violation of the PL; the 14 year old is considered to have the capacity to consent to engage in such activity with a person no more than five years older than the child. However, if the same child engages in the same activity with a 20 year old, it would be a violation of the PL; the child is not considered to have the capacity to consent to engage in such activity with a person more than five years older than the child.

Aggravated Sexual Abuse is defined in PL §§ 130.65-a (fourth degree), 130.66 (third degree) 130.67 (second degree), 130.70 (first degree). The physical action in aggravated sexual abuse is insertion of a finger or foreign object in the vagina, urethra, penis or rectum of another person. For aggravated sexual abuse in the first and second degree and in certain categories of aggravated sexual abuse in the third [Sub. 2] and fourth [Sub. 1(b)] degrees, such physical action must cause physical injury to the victim. Aggravated sexual abuse in the third [Sub.1] and fourth degree [Sub. 1(a)] contain provisions that make it a crime to insert foreign objects without the need for a finding of physical injury by the victim. Whenever a finger in involved in the action, there must be proof of physical injury by the victim.

The statutes provide that conduct performed for a valid medical purpose does not constitute aggravated sexual abuse.

The term "foreign object" is defined in PL § 130.00(9) as any instrument or article which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury.

This leads to the question of what is meant by the requirement that there be physical injury. PL § 10.00(9) defines "physical injury" as impairment of physical condition or substantial pain. This is similar to the physical impairment aspect of the maltreatment definition. However, unlike the maltreatment definition, imminent danger of impairment is not part of the definition of "physical injury" under the PL. Therefore, if the insertion of a finger does not cause some actual impairment, it will not be aggravated sexual abuse; insertion creating imminent danger of impairment does not meet the PL definition.

The activities involved in the offense of aggravated sexual abuse include the following circumstances:

1. the insertion occurs as a result of forcible compulsion;
2. the victim is incapable of consent due to being physically helpless;
3. the victim is less than 11 years old;
4. the victim is incapable of consent by reason of being mentally disabled or mentally incapacitated; or

5. the victim is incapable of consent by reason other than being less than 17 years old.

Items 1 through 3 above are aggravated sexual abuse in the first degree if the object is a foreign object and there is physical injury. Items 1 through 3 above are aggravated sexual abuse in the second degree if the object is a finger and there is physical injury. Items 1 through 3 above are aggravated sexual abuse in the third degree if the object was a foreign object and there is no proof of physical injury, and item 4 is aggravated sexual abuse in the third degree where the object is a foreign object and there is physical injury. Item 5 above is aggravated sexual abuse in the fourth degree where the object is a foreign object or a finger; if a foreign object, there is no need to prove physical injury but if the object was a finger, physical injury to the victim must be proven.

Sexual Misconduct is defined in PL § 130.20. The offense consists of one of the following:

1. the actor engages in sexual intercourse with a victim without the victim's consent;
2. the actor engages in oral sexual conduct or anal sexual conduct with a victim without the victim's consent; or
3. the actor engages in sexual conduct with an animal or dead human body.

This offense is most relevant to sex abuse for child protective purposes in regard to situations where the allegation is that the subject of the report allowed sexual abuse to occur. It becomes relevant in situations where two children have engaged in sexual intercourse, oral sexual conduct or anal sexual conduct and, because of the age-related provisions of the rape and criminal sexual act definitions discussed above, the conduct does not actually fall within any of the definitions of those offenses. The sexual misconduct statute makes this activity a form of sex offense. Therefore, allowing it to occur makes a subject culpable for sex abuse, as discussed below in the "Allowing Sex Abuse to Occur" section of this memorandum.

Beyond that, the commentaries on the PL suggest that, as the three degrees of rape and criminal sexual conduct are all felonies and sexual misconduct is a misdemeanor, sexual misconduct could be used for plea-bargaining purposes. While this makes the offense potentially useful in the criminal justice system, it has no unique relevance in the child protective system. Item 3 does address a topic not found elsewhere in the sex offense statutes but, since the "victim" would not be a child, this item has no real applicability to the child protective system.

Course of Sexual Conduct Against a Child is defined in PL §§ 130.75 and 130.80. Course of sexual conduct against a child incorporates multiple acts that individually would satisfy the definition of sex abuse for child protective purposes. Sexual conduct is defined in PL § 130.00(10) to mean sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact or sexual contact.

The specific actions that constitute the crime of course of sexual conduct against a child are that over a period of less than 3 months:

1. the actor engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, and the victim is less than 11 years old;
2. the actor is 18 years of age or older and engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual abuse, with a victim less than that 13 years of age;
3. the actor engages in two or more acts of sexual conduct with a victim who is less than 11 years of age; or

4. the actor is 18 years of age or older and engages in two or more acts of sexual conduct with a victim who is less than 13 years of age.

Items 1 and 2 above are course of sexual conduct against a child in the first degree and items 3 and 4 above are course of sexual conduct against a child in the second degree.

Forcible Touching is defined in PL § 130.52. It is a misdemeanor. The crime of forcible touching consists of the following:

1. the actor intentionally, and for no legitimate purpose, touches the sexual or other intimate parts of the victim for the purpose of degrading or abusing such person or for the purpose of gratifying the actor's sexual desire.

Forcible touching includes squeezing, grabbing or pinching. Courts have held that the buttock is an intimate part. Forcible touching does not require that the victim be injured in any way or suffer any degree of harm. The actor need not actually experience any sexual gratification. There is no age limitation in this statute.

Persistent Sexual Abuse is defined in PL § 130.53. Persistent sexual abuse consists of the following:

1. the actor commits the crime of either forcible touching (130.52); sexual abuse in the third degree (130.55) or sexual abuse in the second degree (130.60); and
2. within the previous 10 years of the crimes referenced above, excluding any time during which such person was incarcerated for any reason, the actor has been convicted two or more times in separate criminal transactions for which a sentence was imposed on separate occasions, of forcible touching (130.52); sexual abuse in the third degree (130.55); sexual abuse in the second degree (130.60) or any offense defined in Article 130 of the PL of which the commission or attempted commission is a felony

The criminal justice impact of the crime of persistent sexual abuse is an increase in the punishment the actor may face for the commission of the subsequent criminal act given the actor's past history. The underlying subsequent crimes referenced in the persistent sexual abuse statute are misdemeanors. The crime of persistent sexual abuse is a felony. The crime of persistent sexual abuse does not contain an age limitation. It would be up to child protective to apply the facts of its case against the statutory elements of the crime of persistent sexual abuse. It should be noted that the prior criminal convictions need not involve a child victim.

Female Genital Mutilation is defined in PL § 130.85. The offense of female genital mutilation consists of the following:

1. the actor knowingly circumcises, excises or infibulates the whole or part of the labia majora or labia minor or clitoris of a victim who has not reached the age of 18; or
2. being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than 18 years of age, the actor knowingly consents to the circumcision, excision or infibulation of whole or part of the victim's labia majora or labia minor or clitoris.

The act of circumcision, excision or infibulation is not a violation of PL § 130.85 where:

1. the act is necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner; or
2. such act is performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place

it is performed as a medical practitioner, midwife or person in training to become such a practitioner or midwife.

For the purpose of item 1 immediately above dealing with circumstances when there is not a violation of the statute, the statute provides that no account shall be taken of the effect on the person on whom the procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual. This basically means that, with regard to when there is a violation of this statute, there is no defense or exception because of the religious or cultural belief of the actor or victim.

Facilitating a Sex Offense with a Controlled Substance is defined in PL § 130.90. The offense of facilitating a sex offense with a controlled substance consists of the following:

1. the actor knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain; **and**
2. the actor administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to the victim without the victim's consent; and with the intent to commit against the victim conduct constituting felony defined in Article 130 of the PL.
3. the actor commits or attempts to commit such conduct that is a felony under Article 130 of the PL.

The offense addresses situations where the actor attempts to commit a felony under Article 130 of the PL. With the exception of sexual misconduct, forcible touching, sex abuse in the third degree and sex abuse in the second degree, all of the other crimes set forth in Article 130 of the PL are felonies. Please note that the crime of facilitating a sex offense does not reference the age of the victim. Also, for an action to be a sex offense for child protective purposes, the actor must commit the offense.

Sexually Motivated Felony is defined in PL § 130.91. A person commits a sexually motivated felony when the actor commits a specified offense for the purpose, in whole or in substantial part, for the actor's own direct sexual gratification.

For the purposes of this section, a specified offense includes: assault (first and second degree), gang assault (first and second degree), stalking (first degree), strangulation (second and first degree), manslaughter (first and second degree), murder (first and second degree), aggravated murder, kidnapping (first and second degree), burglary (first, second and third degree), arson (first and second degree), robbery (first, second and third degree), promoting prostitution (first and second degree), compelling prostitution, disseminating indecent material to minors (first degree), use of a child in a sexual performance, promoting an obscene sexual performance by a child, promoting sexual performance by a child, or any attempt or conspiracy to commit any of the foregoing crimes.

As noted from the list of specified offenses, most do not have a sexual element attached to the underlying offense. A key element to the offense of sexually motivated felony is that the actor committed the underlying specified offense wholly or in substantial part for the actor's own direct sexual gratification. The crime of sexually motivated felony applies where the actor attempts or conspires to commit the specified offense. As previously noted, for a child protection sex offense, the act must have been committed.

Predatory Sexual Assault is defined in PL § 130.95. Predatory sexual assault involves the circumstance where the actor commits the crime of rape in the first degree, criminal sexual act

in the first degree, aggravated sexual abuse in the first degree or course of sexual conduct against a child in the first degree; and either:

1. in the course of the commission of the crime or the immediate flight there from, the actor either:

   a) causes serious physical injury to the victim of the crime; or

   b) the actor uses or threatens the immediate use of a dangerous instrument; or
2. the actor has engaged in conduct consisting of the crime of rape in the first degree, criminal sexual contact in the first degree, aggravated sexual abuse in the first degree or course of sexual conduct against a child in the first degree against one or more additional persons; or
3. the actor has previously been convicted of a felony defined in Article 130 of the PL or incest (PL § 255.25) or use of a child in a sexual performance (PL § 263.05).

Any of the underlying offenses referenced above involving a child satisfy the definition of sex abuse for child protective purposes. The primary consequence of the offense of predatory sexual assault is to increase the criminal penalties to which the actor may be subjected.

Predatory Sexual Assault Against a Child is defined in PL § 130.96. Predatory sexual assault against a child consists of the following:

1. the actor is 18 years of age or older and commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree or course of sexual conduct against a child in the first degree; and
2. the victim is less than 13 years of age.

Where the underlying crime involved a child under 11 years of age, that crime would in and of itself satisfy the definition of sex abuse for child protective purposes. Again, the primary significance of this offense is to increase the criminal penalties to which the actor may be subjected.

Promoting Prostitution – PL §§ 230.25, 230.30 and 230.32

Prostitution is defined in PL § 230.00 as engaging, agreeing to engage or offering to engage in sexual conduct with another person for money (a fee). The child protective statutes include as types of sex abuse three offenses related to promotion of prostitution, those being PL §§ 230.25 (third degree), 230.30 (second degree) and 230.32 (first degree). The activity involved in promoting prostitution is advancing or profiting from prostitution. Advancing prostitution is defined in PL § 230.15(1) as knowingly causing or aiding a person to engage in prostitution, procuring or soliciting patrons for prostitution, providing persons or premises for prostitution purposes, operating a house of prostitution or prostitution enterprise, or any other conduct designed to institute, aid or facilitate an act of prostitution. Profiting from prostitution is defined in PL § 230.15(2) as accepting or receiving money or property as the proceeds of prostitution where the recipient of the proceeds is not the prostitute.

The specific actions that fall within the three statutes are advancing or profiting from prostitution:

1. where the prostitute is a person less than 19 years old;
2. where the prostitute has been compelled to engage in prostitution by force or intimidation; or

3. where the person advancing or profiting does so by managing, supervising, controlling or owning a prostitution business, house of prostitution, or a business that sells travel-related services where the purpose of the travel is to patronize a prostitute.

Where the child subjected to prostitution is less than 11 years old, the offense is promoting prostitution in the first degree. Where the child subjected to prostitution is at least 11 years old but less than 16 years old, the offense is promoting prostitution in the second degree. Where the child subjected to prostitution is at least 16 years old but under 19 years old, the offense is promoting prostitution in the third degree. In addition, item 2 above is promoting prostitution in the second degree and item 3 is promoting prostitution in the third degree. As a practical matter, the relevant criteria for child protective purposes will be the age criteria; so long as the child is under 19 years old, a subject who advances or profits from the child's prostitution will have committed one of the promoting prostitution offenses, and since a child is defined as a person under the age of 18, all children will fall within the category of persons under the age of 19.

Sex Trafficking – PL §§ 230.34

A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. unlawfully providing to a person who is patronized, with intent to impair said person's judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; (c) methadone; or (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;
2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;
3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a Social Security Administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;
5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:
    a. cause physical injury, serious physical injury, or death to a person; or
    b. cause damage to property, other than the property of the actor; or
    c. engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
    d. accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong, which was the subject of such threatened charge; or

e. expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

f. testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

g. use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

h. perform any other act that would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

OCFS Child Sex Trafficking — The term "sex trafficking" is defined in the federal Trafficking Victims Protection Act (TVPA) as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act." "Severe forms of trafficking in persons" is defined as: "sex trafficking in which the commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age." This means that any child under age 18 who performs a commercial sex act is considered a sex trafficking victim and survivor regardless of whether force, fraud, or coercion is present. A commercial sex act is one where something of value — money, food, clothing, drugs, shelter, protection, or other consideration — is provided in exchange for a sex act. Commercial sex may include a child being prostituted, child pornography, exotic dancing, private sex parties, and other sexual exploitation.

Sex trafficking allegation

A report of sex trafficking can be registered if:

- The child is sex trafficked (see definition above)

and

- The Person Legally Responsible (PLR) gets or is intended to get a tangible benefit (see definition above) from a third party (whether or not the third party is a PLR) in exchange for the child being sex trafficked

In instances where a PLR is aware of but not involved in child sex trafficking and does not take steps to intervene a report of allowing sexual abuse to occur can be registered.

Incest – PL §§ 255.25, 255.26 and 255.27

Incest is defined in PL §§ 255.25, 255.26 and 255.27. A key element of the offense of incest is that the actor knows that the actor is related to the victim, whether through marriage or not, as an ancestor (i.e., parent, grand-parent, etc.), descendant (i.e., child, grand-child, etc.), sibling of the whole or half blood, aunt, uncle, niece or nephew.

The specific actions that fall within the three statutes that address incest, in addition to the actor's knowledge of being related to the victim, are:

1. the actor marries the victim;
2. the actor engages in sexual intercourse, oral sexual conduct or anal sexual conduct with the victim;

3. the actor commits the crime of rape in the second degree or commits the crime of criminal sexual act in the second against the victim; or
4. the actor commits the crime of rape in the first degree, as defined in Sub. 3 or 4 of PL § 130.35 or commits the crime of criminal sexual act in the first degree, as defined in Sub. 3 or 4 of PL § 130.50.

Items 1 and 2 above are incest in the third degree. Item 3 above is incest in the second degree and item 4 above is incest in the first degree. Incest in the first degree applies when the victim is less than 11 years old or when the victim is less than 13 years old and the actor is 18 years or older. Incest in the second degree includes when the victim is less than 15 years of age and the actor is 18 years of older.

Therefore, where the subject engages in sexual intercourse, oral sexual conduct or anal sexual conduct with the actor's child, grand-child, niece, nephew, etc., it would constitute incest regardless of the age of the child. If the child is under the age of 18 and thus within the jurisdiction of the child protective system, the incest would also be sex abuse for child protective purposes. Accordingly, a parent who had sexual intercourse, oral sexual conduct or anal sexual conduct with the actor's 17 year old child would have committed incest and thus, from a child protective perspective, sex abuse, even though this would not be a sex offense under the rape or criminal sexual conduct definitions (because the victim is 17 years old).

There are two things to note here. First, the sexual activity involved in incest is sexual intercourse, oral sexual conduct or anal sexual conduct, as previously defined. The sex offense of sexual abuse is not a basis for a finding of incest. Accordingly, a parent who has sexual contact with his or her 17 year old child (but not sexual intercourse, oral sexual conduct or anal sexual conduct) would have committed neither incest nor a sex offense.

The second item of interest is that a finding of incest can also be based on marriage occurring between the actor and any of the persons listed. Therefore, a person who marries his or her minor child, grand-child, niece, nephew or sibling would have committed incest and, for child protective purposes, sex abuse, by the act of marriage; no sexual activity would be necessary for incest to have been committed. We thus have the interesting possibility of sex abuse occurring from a child protective standpoint without any sexual activity of any sort having taken place.

Sexual Performance by a Child – Article 263 of the PL

Article 263 of the PL defines offenses related to sexual performance by a child. Sexual performance is defined in PL § 263.00(1) as any performance or part of a performance which, for the crime of possessing a sexual performance by a child, includes sexual conduct by a child less than 16 years of age or, for the purpose of the crimes of use of a child in a sexual performance or promoting a sexual performance, includes sexual conduct by a child less than 17 years of age (see the note below in regard to the age criteria). Performance is defined in PL § 263.00(4) as any play, motion picture, photograph or dance or any other visual representation exhibited before an audience. Sexual conduct is defined in PL § 263.00(3) as actual or simulated sexual intercourse, oral sexual conduct, anal sexual conduct, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals. Simulated is defined in PL § 263.00(6) as the explicit depiction of any conduct listed in PL § 263.00(3) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals or buttocks.

It is important to note here that, although the PL definitions, at most, make the offenses applicable only to children under the age of 17, FCA § 1012(e)(iii)(b) provides that the age requirement for application of Article 263 of the PL does not apply to child protective proceedings.

This means that, for child protective purposes, use of any child in a sexual performance will be a form of sex abuse, even if the child is 17 years old.

The term "obscene sexual performance" is defined in PL § 263.00(2). Obscene sexual performance means any performance which, for the purpose of the crime of possessing an obscene sexual performance by a child, includes sexual conduct by a child less than 16 years or age in any material which is obscene or, for the purpose of the crime of promoting an obscene performance by a child, includes sexual conduct by a child who is less than 17 years of age in any material which is obscene. The term “obscene” is defined in PL § 235.00 and refers generally average to material (a) whose predominant appeal is to the prurient interest in sex, (b) which depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, criminal sexual act, sexual bestiality, masturbation, sadism, masochism, excretion, or lewd exhibition of the genitals, and (c) which, considered as a whole, lacks serious literary, artistic, political, and scientific value. While the distinction between a sexual performance and an obscene sexual performance is an interesting academic issue, it is not a topic that needs to be addressed here, as the definition of sexual performance will, for practical purposes, encompass the activity about which we would be concerned for child protective purposes. Whether some of that activity is also "obscene" is relevant for determining exactly what criminal offenses may have been committed but it is not especially significant for our purposes.

The actions that fall within Article 263 are the use of a child in a sexual performance and promoting a sexual performance or an obscene sexual performance by a child. The prohibited activities are where, knowing the character and content thereof:

1. the actor produces, directs or promotes any performance which includes sexual conduct by a victim less than 17 years of age;
2. the actor produces, directs or promotes an obscene performance which includes sexual conduct by a victim less than 17 years of age
3. the actor employs, authorizes or induces a victim less than 17 years of age to engage in a sexual performance;
4. a parent, guardian or custodian of a child consents to the participation of a victim less than 17 years of age in a sexual performance; or
5. the actor facilitates a sexual performance by a victim less than 17 years of age with a controlled substance or alcohol.

Item 1 is a violation of PL § 263.15. Item 2 is a violation of PL § 263.10. Items 3 and 4 are violations of PL § 263.05. Item 5 above is a violation of PL § 263.30.

Promoting a sexual performance is defined in PL § 263.00(5) as procuring, manufacturing, selling, or otherwise distributing or disseminating a performance. PL §§ 263.10 and 263.15 also include within the offense of promoting a performance producing or directing any performance. PL § 263.05 includes within the term "use" of a child in a sexual performance employing, authorizing or inducing a child to engage in a sexual performance. Facilitating a sexual performance by a child with a controlled substance or alcohol involves what the title of the crime states: the actor possesses and administers a controlled substance or provides alcohol to a victim under the age of 17 with the intent to commit one of the acts outlined in items 1-4 above and the actor commits or attempts to commit such act.

What this amounts to is that subjects who induce a child to engage in a sexual performance, use a child in such a performance, record such a performance or distribute the record of such a performance will violate the statutes. Case law has held that taking photographs of children

engaging in the listed activities falls within the meaning of "using" a child in a sexual performance. Also, the definition of promoting a performance includes procuring the performance, and courts have held that obtaining a copy of a record of a sexual performance is a form of procuring a performance. Therefore, a subject who did not convince the child to engage in the sexual performance, who did not him or herself direct or record the performance, and who did not condone the child's participation in the performance, would still violate the statute if the subject obtained a copy of the performance for his or her own use. (A subject who obtained a copy solely for the purpose of turning it over to the authorities for criminal investigation or prosecution would presumably not be considered to be promoting a sexual performance.)

There is one issue here that merits some further discussion. There must be some sexual conduct, as defined above, involved in the performance. This means that not every nude photograph of a child will constitute using a child in a sexual performance; for example, photos of a baby in a bathtub are not likely to fall within the definition of sexual conduct. However, one form of sexual conduct is lewd exhibition of the genitals, so it is possible for a nude photograph, in and of itself, to constitute a sexual performance. The issue is what constitutes "lewd" exhibition, and that will have to be evaluated in light of the circumstances of each case.

15. Allowing sex abuse to occur

In accordance with FCA § 1012(e)(iii), it is also a form of sex abuse for child protective purposes for a subject to allow any of the crimes described and discussed in Section I to be committed. Although the FCA does not specify what is meant by "allowing" sex abuse to occur, the cases and commentaries agree that a subject does not "allow" sex abuse to occur simply by virtue of being a parent, guardian or custodian.

The basis for finding that a subject allowed sex abuse to occur for child protective purposes must involve the following:

1. one of the forms of **sexual abuse** described above **must have occurred** (meaning that all of the elements set forth for either rape, criminal sexual conduct, etc. must be met); **and**
2. the **subject knew or had reason to know** that sexual abuse of the child is occurring or was likely to occur; **and**
3. the **subject failed** to take adequate; **and**
4. the sexual abuse actually occurred, continued or reoccurred after the subject knew or should have known of the abuse.

With regard to the issue of the failure to take adequate measures referenced in item 3 above, when considering whether a subject has taken “adequate measures” to prevent the sex abuse from occurring or reoccurring the following should be considered:

- Age of the child or children involved
- Any special needs of children involved
- Level of supervision possible and/or appropriate for the child
- What a reasonable person would have done in a similar situation

The discussion below will provide further guidance on the elements noted above for a finding that a parent or person legally responsible allowed the sex abuse of his or her child.

It is worth emphasizing that there is one very basic and important point that must be applied in determining whether a subject can be said to have allowed sex abuse to occur; **there must be some underlying sex abuse**. If the underlying activity is not sex abuse in one or more of the forms described and discussed above, the subject cannot have allowed sex abuse to occur. Thus, where the subject becomes aware that sex abuse has not occurred but is likely to occur, the subject must take actions to prevent the sex abuse to occur. In that circumstance, there can only be an indication for sex abuse if some form of sex abuse does actually subsequently occur. Similarly, where the subject becomes aware of the sex abuse after it occurred, the obligation of the subject is to take action to prevent the continuation or recurrence of the sex abuse. In that circumstance, there can only be an indication for sex abuse if some form of sex abuse actually continues or recurs. If the sex abuse never happens, or does not continue or recur, it is possible that there has still been some form of maltreatment (e.g., a lack of proper supervision), but it would not be sex abuse.

If there has been some underlying sex abuse, the subject must then either know that the sex abuse is occurring, likely to occur or has occurred or must have reason to know; the knowledge or reason to have knowledge of the underlying sex abuse creates the obligation for the subject to act to prevent the sex abuse from occurring, continuing or recurring. Where the subject does not take reasonable and appropriate action based upon his or her knowledge of the sex abuse,

or fails to take reasonable and appropriate action while having reason to know of the sex abuse, and the sex abuse occurs, continues or recurs, the subject has allowed sex abuse to occur.

The responsibility to take some action to prevent the sex abuse from occurring or recurring is to take reasonable and appropriate action under the circumstances. The obligation is not to guarantee or assure that the sex abuse does not occur or recur. What constitutes reasonable and appropriate action will depend on the totality of the circumstances, taking into consideration factors such as: the age and capabilities of the child; any special needs the child may have; the level of supervision that is possible and appropriate for the child; the exact nature and reliability of the information possessed by the subject; what information it would be reasonable to expect the subject to know or infer under the circumstances; and what a reasonable person would be expected to do under the circumstances. If the subject of the report has clearly taken extensive measures to prevent the sex abuse from occurring or recurring, but the sex abuse nevertheless occurs or recurs, then the subject has not allowed sex abuse to occur. Where the subject, having knowledge or reason to know of the sex abuse, takes no action to prevent it, then the subject has allowed the sex abuse to occur. The middle ground between those two circumstances (which will be the majority of the cases) is where the subject has taken some action or actions, and the action or actions did not prevent the sex abuse from occurring or recurring. In that situation, it will be necessary to assess the actions taken by the subject to determine if those actions were reasonable and appropriate. If so, then the subject has not allowed sex abuse to occur.

In that regard, a common circumstance where the issue of allowing sex abuse to occur becomes relevant is where the subject's teenage child is involved in some form of sexual activity with another teenager where the children involved are close in age. All of the discussion above is relevant to evaluating such cases, particularly the issue of the level of supervision that is both reasonably possible and appropriate under the circumstances given the child's age and level of maturity. It is also important to note that a subject assisting a child in obtaining sexual or reproductive health care services, or a subject's knowledge of and/or support for, a child obtaining sexual or reproductive health care services, does not in and of itself mean that a report should be indicated. For example, where the parent or person legally responsible assists the child to secure reproductive health services through Planned Parenthood or encourages or assists in the testing of the child for sexually transmitted diseases, such action in isolation does not prove that the parent or person legally responsible allowed the child to be sexually abused. As with any other factor, the totality of the circumstances must be evaluated to determine whether such action was reasonable and appropriate under the circumstances.

It is also important to note that the indication for allowing sex abuse to occur is for sex abuse; it is a form of abuse and is **not** maltreatment. This is because an indication for allowing sex abuse to occur is based on the sex abuse definition in FCA § 1012(e). It is not uncommon for cases of allowing sex abuse to occur to be indicated as maltreatment. Such indications create a problem because, if the case is handled as maltreatment, the indication must be based on finding evidence of the elements of maltreatment. This means that impairment or imminent danger of impairment must be shown, as well as a causal connection between the subject's lack of action and the underlying abuse. Both of these may be difficult to do in some situations, so it is best to treat cases of allowing sex abuse to occur as what they are, which is a form of sex abuse.

The above is intended to provide a reasonably comprehensive discussion of what constitutes sex abuse for child protective purposes, and is intended for general informational purposes.

16. Malnutrition / Failure-to-thrive

These are two distinct conditions and should be assessed separately. Malnutrition is failure to receive adequate nourishment. It may be caused by inadequate diet, lack of food or insufficient amounts of needed vitamins and minerals. Non-organic failure-to-thrive is a condition in which an infant's weight, height and motor development fall significantly below age-appropriate ranges with no medical or organic cause. The death of the child is the end result in extreme cases. Non-organic failure to thrive can result in continued growth retardation as well as cognitive and psychological problems. Even with treatment, the long-term consequences can include continued growth problems, diminished cognitive abilities, retardation, and socio-emotional deficits such as poor impulse control.*

* Goldman, J., Salus, M., Wolcott, D., Kennedy, K., A *Coordinated Response to Child Abuse and Neglect: The Foundation for Practice*, DHHS, Office of Child Abuse and Neglect, 2003, p. 36

To obtain an accurate diagnosis, it is essential that a physician evaluate a child who is suspected to be suffering from failure-to-thrive or malnutrition. The family history should be searched for diseases which might affect growth, the physical examination of the child must be detailed and thorough, bone x-rays should be obtained and specialized laboratory tests performed. Nelson's Textbook of Pediatrics (Sixteenth Edition) recommends that most children with nonorganic failure to thrive should be hospitalized and given unlimited feedings of a diet appropriate for age for a minimum of one week. The key consideration is whether the child who is unable to gain weight at home, can gain weight rapidly and easily in the hospital.

It should be underlined, however, the diagnosis is complex and requires a skilled physician.

► *Immediate considerations*

- Was a complete and detailed physical examination of the child conducted and what were the results?
- Were x-rays and laboratory tests obtained and what were the results?
- What was the parent's/other person legally responsible's explanation for the child's condition? Good note taking is essential. Use direct quotes.
- Were the interactions of the parent/other person legally responsible and child observed and what were the findings?
- Was a discussion held with the physician and other medical professionals concerning their diagnosis and explanation of the child's condition? What were the results? Identify professionals by name, professional title, and address.

17. Inadequate food / clothing / shelter

An actual failure by the parent or other person legally responsible to supply adequate food, clothing or shelter, although financially able to do so or offered financial or other reasonable means to do so, is a form of child maltreatment.

Food

Nutrients such as vitamins, minerals and proteins are as essential for growth in children as is an adequate intake of calories.

Poor growth of a child is the primary reason for suspecting inadequate food intake and nutrition. This may be due to organic or environmental conditions. Anemia, in which there is a reduction in the number of red blood corpuscles or amount of hemoglobin or both, may be characterized by paleness and lack of vitality. Nutritional anemia is due to inadequate oral intake of iron-containing foods such as eggs and meat. Medical examination is necessary to determine the nature and extent of the injury to the child.

Clothing

A child needs basic clothing items such as underwear, shoes and appropriate outer clothes to provide protection from weather conditions. To support adequate hygiene, clothing must be reasonably clean so that there is freedom from disease and infection.

Shelter

Children require shelter which provides basic safety, sanitation, and heat. A family may live in substandard housing because it is unable to find or afford better conditions. Such things as broken furniture, overcrowding, and messiness are generally not grounds for protective intervention by themselves. If the condition represents a health or safety hazard to the child which the parent or other person legally responsible is unable or unwilling to correct or take reasonable steps to correct, protective intervention is warranted.

► *Immediate considerations*

- What is the condition of the child? Has the child been harmed or is he in imminent danger of harm?
- What was observed to be inadequate in the provision of food, clothing or shelter?
- What is the parent's explanation for these conditions? Good note taking is essential. Use direct quotes.
- To what degree has the parent or other person legally responsible sought to provide adequate food, clothing or shelter for the child?
- Did the parent or other person legally responsible fail to provide adequate food, clothing or shelter despite financial ability or other reasonable means to do so?

18. Inadequate guardianship

This term applies to the overall quality of care the parent or other person legally responsible provides the child(ren). Guardianship is inadequate if it fails to meet a minimum standard of care for the child within commonly accepted societal norms. Inadequate guardianship results in actual physical or developmental harm to the child, or imminent danger of such harm. Inadequate guardianship includes, but is not limited to:

- Continually allowing a child to remain away from home for extended periods of time without knowledge of the child's whereabouts.
- Making demands beyond the child(ren)'s physical or emotional abilities which results in harm or imminent danger of harm to the child.
- Exploitation of the child(ren) by a spouse in marital or custodial disagreements, or litigation disputes which results in specific harm or imminent danger of harm to the child. Litigation itself is not sufficient to show inadequate guardianship (see **Emotional Neglect**).
- Exposing, exploiting or encouraging the child to participate in illegal and/or immoral acts.
- Leaving a child(ren) in the care of another person without establishing a plan for the provision of adequate food, clothing, education or medical care.
- Providing constant surveillance of the child and limiting activities to the extent these actions result in harm or imminent danger of harm to the child.

▶ *Immediate considerations*

— What is the condition of the child(ren)? Has the child been harmed or is he or she in imminent danger of harm?

— What is the age of the child and what capacity does the child have to care for himself/herself?

— What is the capacity of the parent or other person legally responsible to provide care for the child?

— What is the parent's/other person legally responsible's current child care practices?

— Do these practices meet a reasonable, minimum standard of care for the child?

19. Lack of supervision

Lack of supervision is evident if a child is alone or not competently attended to for any period of time to the extent that his or her need for adequate care goes unnoticed or unmet, and the child is harmed or exposed to hazards that create an imminent danger of harm.

Parents and other persons legally responsible have a responsibility to supervise their children or arrange for proper competent supervision. Proper supervision means that the child's minimum needs for adequate food, clothing, shelter, health, and safety are met. The need for supervision varies with the age and developmental stage of the child.

An infant (0 to 24 months) has some mobility but cannot meet any needs of his/her own and must be under the constant care of a competent, mature person; toddlers (age 2 to 4) need broader space to explore. Toddlers can walk, climb, have no sense of danger and must be closely watched to keep safe from harm. A preschool child (age 4 to 6) can play independently but cannot be responsible to meet basic needs for adequate food, clothing, shelter, health, and safety.

School-aged children (age 6 to 12 years) may not be ready for the responsibility of being on their own even for short periods of time. Even children over the age of 12 may lack the physical, mental, or emotional capacity to be left unsupervised for longer, or possibly even shorter, periods of time. A child who cannot be responsible for meeting his or her own needs cannot be a competent caretaker for other children.

Each situation in which there is an allegation of lack of supervision must be carefully assessed to determine the basic needs of the child(ren), the child's capacity to meet those needs on his/her

own, and the role of the parent or other person legally responsible in insuring that the child's needs are adequately met.

► *Immediate considerations*

- What is the condition of the child(ren)? Has the child been harmed or is he in imminent danger of harm?
- What is the age of the child and what capacity does the child have to care for himself/herself?
- What basic needs of the child have gone unnoticed or unmet?
- At what time of day did the child's needs go unnoticed or unmet and how long did the situation last?
- What was the parent's/other person legally responsible's explanation for this situation? Good note taking is essential. Use direct quotes.
- What degree of planning for adequate child care has the parent shown?
- Is the caretaker mature and competent to provide a minimum degree of care, given the age and circumstances of the child(ren)?
- Are there environmental/home factors that exist that may elevate the level of supervision that is required; e.g., proximity to a highway, a swimming pool, firearms, etc.

20. Abandonment

Abandonment means that the parent or other person legally responsible for the care of a child under 18 years shows by his or her actions an intent to forgo parental rights and obligations (FCA §1012 and SSL §384-b(5)).

The assessment of abandonment depends on gathering and analyzing the facts and related history to determine whether there is some credible evidence that the parent or other person legally responsible intends to give up parental responsibility totally and completely. The **intent** of the parent as shown by his or her **actions** is the key variable in assessing whether abandonment has occurred.

In cases in which an allegation of abandonment arises where a parent or other person legally responsible has left a child in someone else's care, the following should be considered: whether expectations for the duration of child care were reasonable, whether parental failure to return or communicate was due to acts of the caregiver which prevented or discouraged parental contact, and whether the parent's failure to return or communicate occurs despite parental ability to return or communicate.

The New York Abandoned Infant Protection Act (AIPA) was created in Chapter 156 of the Laws of 2000 and was later modified in Chapter 447 of the Laws of 2010. It established the Abandoned Infant Information Helpline. Most importantly, the Act removes criminal liability when a person abandons an infant who is not more than 30 days old in a safe manner, in accordance with Penal Law §§ 260.00(2) and 260.10(3). These provisions apply when the parent, guardian, or other legally responsible person leaves the infant with an appropriate person or leaves the infant in a suitable location and immediately notifies an appropriate person of the child's location. The person who is abandoning the infant is not required to identify himself or herself.

This act did not amend child protective statutes, mandated reporter requirements, or the standards for the termination of parental rights in either the Social Services Law or the Family Court Act. Cases that fall within the AIPA must still be reported to the Statewide Central Register

of Child Abuse and Maltreatment if the parent is identified, investigated by Child Protective Services, indicated if the parent is found to have abandoned the infant, and referred to Family Court for intervention when appropriate.

▶ *Immediate considerations*

- What actions were taken by the parent/other person legally responsible which indicate that the parent/other person legally responsible wanted to give up responsibility and obligations for the child?
- What reasons did the parent/other person legally responsible give for taking these actions?
- Did the parent/other person legally responsible have an ability to return to or communicate with the child?
- Was the parent or other person legally responsible prevented or discouraged from returning to or communicating with the child?
- Did the parent/other person legally responsible fail to return or communicate despite an ability to do so?
- Were the parent's/other person legally responsible's identity or whereabouts unknown?

21. Dead on arrival (DOA) / Fatality

This allegation is registered when there is reasonable cause to suspect that the actions or inactions of a parent or person legally responsible for the care of a child contributed to the death of the child. The death of an otherwise healthy child where there is no plausible explanation for the death provides reasonable cause to suspect abuse. An allegation of DOA/Fatality cannot stand alone; there must be another allegation with it to show how the child died (e.g., Inadequate Guardianship, Lack of Supervision, etc.)

▶ *Immediate considerations*

- Where was the child found? What was the condition of the child's immediate surroundings?
- When was the last time the child was observed alive and by whom?
- Who was responsible for, or had access to, the child at the time of death?
- If the child died in a bed, what was the sleeping arrangement? If the child died in a crib, what else was in the crib?
- Did the child have a preexisting medical condition that contributed to the death?
- What was the condition of the child's body? Did the child have any visible injuries?

For additional information on what to consider when the allegation is DOA/Fatality, see **Chapter 11,** *Child Fatality Reviews***.**

22. Other

This category is used at intake at the SCR primarily for two types of circumstances: 1) Court ordered investigations; and 2) a person legally responsible for a child is a registered, convicted or recently arrested child sex offender.

FCA §1034 allows a Family Court judge to order an investigation in a proceeding under Article 10 of the FCA or in order to determine whether a proceeding under Article 10 should be initiated. Where a court orders an investigation and there is some other applicable allegation type as a

basis for accepting the report (e.g., allegations of excessive corporal punishment or inadequate guardianship), a report will be registered at intake using the appropriate allegation type. Where there is not clearly an applicable allegation type, the SCR will register the report under the category of "other". If an investigation of a report pursuant to FCA §1034 where the listed allegation is "other" results in a finding of some credible evidence of abuse or maltreatment, the report should not be substantiated as "Other"; rather, the appropriate allegation type(s) should be selected, based on the particular facts and circumstances that exist in the family that has been investigated that show that abuse and/or maltreatment have occurred (please refer to the pertinent allegation type for guidance concerning criteria and considerations). The fact that a court ordered an investigation is not, in and of itself, a sufficient basis to indicate a report, so a report should never be indicated on that basis.

The SCR will accept reports where the only allegation is that a person who lives in the home, or is in the home with sufficient regularity and has sufficient contact with the child to be considered a person legally responsible, is on the Sex Offender Registry, has been convicted of a sex offense against a child, or has recently been arrested for a sex offense against a child. The purpose of accepting such reports is concern for the possibility that the child may have been sexually abused or exposed to other inappropriate behavior by the sex offender. While a report will be accepted solely based upon such an allegation, that allegation alone is not sufficient in and of itself to support a determination that a child has been sexually abused. Such an allegation is sufficient to constitute reasonable cause to suspect that the child is at risk of being sexually abused, thereby warranting a report to the SCR and the commencement of a child protective investigation.

A thorough investigation should be conducted to determine whether the registered, convicted or recently arrested child sex offender has committed a sex offense or engaged in any other form of abuse or maltreatment against any child living in the home, as well as a full assessment of the appropriateness of the parenting of all adults in the home. Even if there is no credible evidence of child sexual abuse, there may or may not be other elements of harm or imminent risk of harm, including emotional harm, caused in part or whole by the presence and the actions of the registered, convicted or recently arrested child sex offender. If, however, at the end of the investigation, the only information found is that there is a registered, convicted or recently arrested sex offender who is a person legally responsible for the child, the report cannot be indicated solely on that basis. The report may be indicated only if there is some credible evidence of some form of abuse or maltreatment. If that is the case, the report should be indicated under the applicable allegation type (e.g., sexual abuse, lack of supervision) and not for the category of "other".

▶ *Immediate considerations*

(The literature is not entirely consistent as to the likelihood and risk factors associated with whether a child sex offender is likely to reoffend; however, what follows are some of the considerations concerning both the offending and non-offending parent that may place children at greater or lesser risk.)

- Does the registered, convicted or recently arrested child sex offender have unsupervised time with the children?
- Does the non-offending parent supervise any child's intimate tasks (e.g., bathing) and consciously attempt to prevent opportunity for the registered, convicted or recently arrested sex offender to have tempting or opportunistic access to the children?

- Even in supervised settings, does the registered, convicted, or recently arrested sex offender engage in the following types of physical contact with the children: hugging; wrestling; tickling; stroking their hair; having them sit on his/her lap? (Note: these otherwise normal and innocent forms of contact with a child may not be appropriate if a person is a child sex offender)
- Does the registered, convicted, or recently arrested sex offender give undue attention or gifts to a child?
- Are there children in the home that are the target age and sex of the child(ren) who was sexually abused or alleged to have been sexually abused by the registered, convicted, or recently arrested child sex offender;
- Are there children in the home who have low self-esteem, low self-confidence, or are lonely, quiet and/or passive?

F. Standards of evidence for each child protective process stage

The standards of evidence differ with each step in the child protective process. Below is a chart that briefly outlines these standards.

CHILD PROTECTIVE PROCESS	STANDARDS
1. Investigation/Determination of Abuse / Maltreatment	1. The standard of proof used to determine whether to indicate or unfound a report of suspected abuse is **some credible evidence** to support the allegations of abuse or maltreatment in cases accepted by the SCR before January 1, 2022, or a **fair preponderance of evidence** to support the allegations of abuse or maltreatment in cases accepted by the SCR on or after January 1, 2022 or maltreatment is some credible evidence. Some credible evidence is defined as evidence that is worthy of being believed. [See 18 NYCRR 434.10(h)]
2. Administrative Fair Hearing	2. The subject of a report has the right to a fair hearing to determine whether the record of the report in the State Central Register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with Title 6, Article 6 of the Social Services Law. The standard of evidence for maintaining such records is a fair preponderance of evidence [see 97 LCM-58 and its discussion on Matter of Walter W., (235 A.D.2d 592, 651 N.Y.S.2d 762, leave to appeal denied 89 N.Y.2d 813, 658 N.Y.S.2d 243 (1997)]. Before a prospective employer, foster care or adoption agency can be notified as to the existence of an indicated report of child abuse or maltreatment, the subject is entitled to an administrative review and hearing with respect to the report(s) in question. The standard of evidence for releasing such information is a fair preponderance of the evidence [see 95 LCM-39 and its discussion on Valmonte v. Bane, 18 F.3d 992 (1994)].
3. Family Court Determination of whether child abuse or neglect occurred.	3. Fair Preponderance of Evidence - The outcome will favor the side that has the greater part of the evidence. "Greater" is a qualitative not quantitative term, i.e., the quality of the evidence of one side more nearly represents what took place. If the evidence weighs evenly, so that neither side has a preponderance of it, the issue will be resolved against the party that has the burden of proof and in favor of the opposing party. This is a higher standard than the standard used to "indicate" by child protective services.

4.	Termination of Parental Rights: Family Court Standard	4.	Clear and convincing evidence – In proceedings to terminate a parent's rights to a child on the basis of: death, abandonment, permanent neglect, mental illness, mental retardation, or severe or repeated abuse, the standard used is clear and convincing evidence. The evidence must exceed a fair preponderance and be highly probable.
5.	Criminal Court Standard	5.	Beyond a Reasonable Doubt - This is the highest standard. The evidence must point to one conclusion and leave no reasonable doubt about that conclusion.
6.	Indian Child Welfare Act of 1978	6.	For an abuse or neglect proceeding under Article 10 of the Family Court Act where a Native American child is involved, the standard of proof is clear and convincing evidence. The standard of proof where there is a Native American child in a termination of parental rights proceedings is beyond a reasonable doubt (see 18 NYCRR 431.18).
7.	Expungement of Unfounded Report	7.	When there is a request to expunge an unfounded report prior to the normal expungement time of 10 years after the date of the report, the standard to be met is clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment. A subject may also have an unfounded report expunged if the source of the report was convicted in criminal court of having made an intentional false report to the SCR. [See SSL § 422(5)(c)]

G. Criminal justice system

1. Types of crimes

A criminal offense is conduct, by act or omission, punishable by imprisonment or fine as provided by state, local or administrative law. (Penal Law §10.00) The basic categories of offense are:

i. Petty offenses mean traffic infractions or violations. (Criminal Procedure Law § 1.20(3)) A violation is an offense other than a traffic infraction, for which imprisonment beyond 15 days cannot be imposed.

j. Crimes are divided into misdemeanors and felonies. Misdemeanors are offenses, other than a traffic infraction, for which imprisonment may be imposed in excess of l5 days but not over one year. Felonies are offenses in which imprisonment may exceed one year. (Penal Law §10.00)

2. Specific crimes relating to child abuse and maltreatment cases

A district attorney may prosecute child abuse and maltreatment cases under one or more of the statutes in the New York State Penal Law. The following list, while not inclusive, contains acts that legally constitute crimes against children.

a. Assault and reckless endangerment - Penal Law, Article 120

b. Homicide, manslaughter and murder - Penal Law, Article 125

c. Sex offenses - Penal Law, Article 130

d. Incest - Penal Law, § 255.25

e. Abandonment and endangering the welfare of a child - Penal Law, Article 260[2]

f. Using a child in a sexual performance and promoting a sexual performance by a child - Penal Law, Article 263

3. Steps in the Criminal Justice process

The decision to initiate a prosecution is the sole responsibility of the District Attorney. Among the factors that the District Attorney considers are: the strength of the evidence, the seriousness of the harm caused by the offense, and the adequacy and availability of alternative remedies.

Further information on the material found in this Appendix may be found in *The Courts of New York: A Guide to Court Procedures*,, available on the New York State Bar Association's website.

[2] The Abandoned Infant Protection Act, as amended in 2010, removes criminal liability when a person abandons an infant no more than 30 days old, as per the provisions of Penal Laws 260.00(2) and 260.10(3).

H. Title 6 of Article 6 of the Social Services Law

Information regarding the Social Services Law can be found electronically through either of the following links:

http://public.leginfo.state.ny.us/menuf.cgi

or

http://codes.findlaw.com/ny/social-services-law/

I. Article 10 of the Family Court Act

Information regarding the Family Court Act can be found electronically through either of the following links:

http://public.leginfo.state.ny.us/menuf.cgi

or

http://codes.findlaw.com/ny/family-court-act/

J. New York State regulations regarding child abuse and maltreatment: Part 432 - Codes Rules and Regulations

Part 432 of the Codes Rules and Regulations of New York State can be found online at the New York State Department of State's website:

NYS Department of State's link to Codes Rules and Regulations:

https://www.dos.ny.gov/info/nycrr.html

or

Link to Title 18 of New York Codes, Rules and Regulations at Westlaw:

http://government.westlaw.com/linkedslice/default.asp?SP=nycrr-1000

At either of the above websites, you can access the regulations referenced in the Child Protective Services Manual by clicking on:

- Title 18, Department of Social Services, then
- Chapter II, Regulations of the Department of Social Services, then
- Subchapter C, Social Services
- Article 2. Family and Children's Services
- Select the appropriate Part. The Part of Child Abuse and Maltreatment in Part 432, but there are several regulations from several other parts referenced in this Manual.

K. Model memorandum of understanding

1. Roles of and responsibilities of child protective services and the district attorney in investigations* of child abuse and maltreatment

Child Protective Services	District Attorney
The role of Child Protective Services (CPS) in investigations of child abuse/maltreatment is to provide immediate and long term protection of the child from further abuse or maltreatment and rehabilitative services to the child and family. The responsibilities of Child Protective Services include: • commencing an investigation within 24 hours of receiving a report from the State Central Register; • assessing the environment of the child named in the report and any other children in the home in order to determine the immediate and/or impending risk to such children if they remain in the home and to take protective custody, if such children are in imminent danger; • notifying the subject and other persons named in reports that are being investigated, in writing and within seven days, of the report and their rights to seek amendment of the record. • making a determination within 60 days whether there is some credible evidence of child abuse/maltreatment. • initiating Family Court action, where necessary, in order to compel the	The role of the district attorney is to authorize a criminal investigation of an alleged incident of child abuse/maltreatment for the purpose of determining whether a crime has been committed and where appropriate to criminally prosecute the responsible person(s). The responsibilities of the district attorney include: • serving in an advisory capacity to law enforcement officials who are conducting a criminal investigation of child/maltreatment concerning: — case review — case file preparation — assistance in preparation of and obtaining search warrants — interviews/confrontations — general legal advice — witness preparation • evaluating the evidence gathered to determine whether to pursue criminal prosecution of an alleged perpetrator. • Participating as a member of a multidisciplinary child abuse/maltreatment investigative team, where such an approved team is established.

* The responsibilities of the CPS included in this list apply only to cases that are assigned to the Investigation track and not to cases assigned to the family assessment response (FAR) track. Cases that rise to the level of possible prosecution are not assigned to FAR, and if already assigned to FAR, are closed and re-opened to be addressed with an investigation.

family to accept services or to seek a disposition which separates the child(ren) from the offending parent(s)or otherwise offers appropriate protection to the child(ren). • providing and/or coordinating the provision of rehabilitative services to the child and the family. • participating as a member of the multidisciplinary child abuse/maltreatment investigative team, where such approved team is established. • referring suspected cases of intentional false reporting of child abuse and maltreatment in violation of subdivision four of the Penal Law § 240.50 to the appropriate law enforcement agency or district attorney.	

2. Appointment of liaisons

Child Protective Services	District Attorney
Where there is no multidisciplinary team, Child Protective Services should appoint a liaison to the district attorney's office whose role will be to facilitate working relationships and cooperation on child abuse/ maltreatment investigations so that each party can fulfill their respective roles and responsibilities as delineated in Section I.	Where there is no multidisciplinary team, the district attorney should appoint a liaison to CPS whose role will be to facilitate working relationships and cooperation on child abuse/ maltreatment investigations so that each party can fulfill their respective roles and responsibilities as delineated in Section I.

3. Referral of reports of suspected child abuse and maltreatment

Child Protective Services	District Attorney
Child Protective Services shall provide the district attorney with immediate telephone notice and forward a copy of any reports involving the death of a child made pursuant to Article 6, Title 6 of the Social Services Law (i.e., reports to the Statewide Central Register of Child Abuse and Maltreatment involving the death of a child). Child Protective Services will give immediate telephone notice and forward immediately to the appropriate local law enforcement entity new child protective reports involving any of the following allegations: the death of a child; sexual abuse of a child; and/or the infliction of, or allowing the infliction of, physical injury to a child by other than accidental means which causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ. In the following circumstance, Child Protective Services (CPS) must make a timely assessment of whether to provide notice to the appropriate law enforcement entity (if CPS determines that such notice should be given, it shall provide immediate telephone notice and forward the report): a report of suspected maltreatment is made by a mandated reporter; the report alleges physical harm; and there have been two or more reports that were indicated or are still under investigation within the previous six months involving the same child, a sibling, other children in the household, or the subject of the report. Once a report as described in the previous two paragraphs generates a notice to a local law enforcement entity, Child Protective Services must conduct an investigation with law enforcement through a multidisciplinary investigative team, if one exists, or through a joint investigation with a local law enforcement entity.	The district attorney requests or has previously requested in writing that the district attorney receive notice and copies of reports containing specified types of allegations of child abuse/ maltreatment. Upon receipt of notice from CPS that a report which has been addressed through a multidisciplinary team or joint investigation has been unfounded, the district attorney will take appropriate action concerning all records received from CPS concerning such report in order to maintain the confidentiality of such reports.

Child Protective Services shall immediately provide the district attorney with telephone notice and copies of any and all reports of child abuse and maltreatment containing the kinds of allegations that the district attorney has requested in advance to receive in writing, pursuant to SSL §424.4. Child Protective Services may not share with the district attorney either open or closed reports addressed by family assessment response as all FAR reports are legally sealed. Where a report that was previously forwarded to the district attorney is later unfounded and sealed, upon receipt of notice from the State Central Register, CPS will so notify the district attorney in writing.	

4. Identification and notification of law enforcement agencies

Child Protective Services	District Attorney
When it receives a report that includes an allegation of the type for which the district attorney has requested notice, CPS shall telephone the district attorney to advise the district attorney of the report and shall provide a copy of the report to the district attorney. If authorized by the district attorney, CPS shall contact the designated police agency.	The district attorney designates law enforcement agencies to conduct investigations of child abuse and maltreatment in specified geographic areas. Upon receiving notice from CPS of a report, as requested per § III, the district attorney will determine whether a criminal investigation should be initiated. If so, the district attorney shall contact the designated police agency to request initiation of the criminal investigation or authorize CPS to contact the designated police agency.

5. Procedures for communication during joint CPS / law enforcement investigations of child abuse and maltreatment

Child Protective Services	District Attorney
Child Protective Services will contact the designated police agency by telephone prior to making any initial contacts with the child, any other person named in the report, or the subject of the report; this will enable CPS and the police to determine together the appropriate procedures for such contact in	The district attorney authorizes Child Protective Services to contact the appropriate police agency prior to making any initial contacts with the child, any other person named in the report, or the subject of the report for the purpose of determining appropriate procedures for such contact in those situations where criminal investigation is

those situations where a criminal investigation is necessary. Child Protective Services, in conjunction with a multidisciplinary investigative team, if one exists, or with the designated police agencies, shall develop standardized procedures for coordinating investigations of child abuse/maltreatment, including: interviewing the child, subject, other family members, witnesses, and others; evidence gathering; and, where appropriate, taking the child for a medical exam. Pursuant to SSL §422.4, Child Protective Services will share additional CPS information related to reports that CPS is currently or has previously investigated with the district attorney, assistant district attorneys, investigator(s) employed in the district attorney's office, or other police officials when such officials state in writing that they are participating in a criminal investigation or criminal prosecution of the subject of a report and there is reasonable cause to believe that such investigation or prosecution is related to the CPS records being requested. If there is an investigation of a missing child, the district attorney may request of the CPS and should immediately be given access to, information in an open or indicated CPS investigation report, if the district attorney states that he/she: • suspects that the child's parent, guardian or other person legally responsible for the child may be a subject of a CPS report, or that the child or his/her sibling may be a child named in a report, and • that information from such a report is or may be needed for the investigation of the missing child. At any time during the course of an investigation, either CPS or the district attorney may request a case conference to discuss the on-going investigation. In any case where the district attorney's designees have been involved in the	necessary. – or – Working as part of a multidisciplinary investigative team, where one exists, the district attorney, Child Protective Services, and the designated police agencies (see **Chapter 6**, *Child Protective Services Investigations*) develop procedures for coordinating investigations of child abuse/ maltreatment including procedures for: interviewing the child, subject/perpetrator, other family members, witnesses, and others; evidence gathering; and, where appropriate, taking the child for a medical exam. The district attorney, assistant district attorney(s), investigator(s) employed in the district attorney's office, or other police officials designated by the district attorney who are involved in an investigation or prosecution shall receive additional written CPS information (other than the initial report to the SCR already provided) when the district attorney, assistant district attorney, investigator or police official states, in writing, that the records, reports and other information are necessary to conduct a criminal investigation or prosecution of the subject of the report and there is reasonable cause to believe that such investigation or prosecution is related to the CPS records being requested. If there is an investigation of a missing child, the district attorney may request of the CPS, and should immediately be given access to, information in an open or indicated CPS investigation report, if the district attorney states that he/she: • suspects that the child's parent, guardian or other person legally responsible for the child may be a subject of a CPS report, or that the child or his/her sibling may be a child named in a report, and • that information from such a report is or may be needed for the investigation of the missing child.

investigation, CPS will notify the district attorney of subsequent Family Court action. Child Protective Services shall provide the district attorney with on-going information during the course of the criminal investigation or prosecution concerning the treatment plan for the child/family, if the district attorney requests it in writing.	At any time during the course of an investigation, either CPS or the district attorney may request a case conference to discuss the on-going investigation. The district attorney will notify CPS of any investigatory or court action taken on a case under joint investigation or for which CPS has provided information to the district attorney or the district attorney's designee.

L. Child Fatality Investigations

This section is intended to provide guidance to Child Protective Services (CPS) caseworkers and supervisors regarding the actions to take in the investigation of CPS reports involving a sleep-related death or injury and the criteria for making the determination whether to indicate or unfound such reports. Please refer to 13-OCFS-LCM-01, *Investigation and Determination of Sleep Related Fatality and CPS Reports and* 10-OCFS-LCM-15, *Guidance for CPS Investigations of Infant Fatalities and Injuries Involving Unsafe Sleeping.*

1. Fatality report checklists

As per communication from Laura Velez to the local commissioners on December 6, 2017, the checklists that follow were distributed in response to several requests from local districts for guidance related to investigations into child deaths.

One checklist applies to child deaths that are reported to the SCR, the other is for cases when a child dies in a foster care, preventive or CPS case when no fatality report is registered by the SCR.

These checklists are not required, nor do they include any new requirements or modify any existing standards for investigations related to the death of a child. They are intended to be a tool for use by a CPS worker, a supervisor or a manager to provide a reminder of the details associated with investigation and provision of services to families in the difficult circumstance when a child dies.

a. *SCR*

“Completion of this checklist is not required by OCFS. This is an optional tool for use by CPS workers, CPS supervisors and/or LDSS management in considering necessary actions during a child fatality investigation.”

b. *Non-SCR*

“Completion of this checklist is not required by OCFS. This is an optional tool for use by LDSS staff in considering case activities when a child death occurs in an open case. The following specifically speaks to actions related to the child fatality, not of service case practice.”

2. SCR reported fatality checklist

This checklist is designed to help guide workers towards meeting the mandates for case activities during a child fatality investigation. Several tasks listed below are specific to investigations regarding a child death. Completion of this checklist is not required by OCFS. This is an optional tool for use by CPS workers, CPS supervisors and/or LDSS management in considering necessary actions during a child fatality investigation.

*** This checklist is not all-inclusive. Refer to the CPS Program Manual for complete guidance.**

	Yes	No	NA
Initiated the investigation within 24 hours of receipt of the SCR report	☐	☐	☐
Notified the District Attorney about the SCR report within 24 hours	☐	☐	☐
Immediately notified law enforcement about the SCR report	☐	☐	☐
Assigned the investigation to the Multi-Disciplinary Team – For counties without an MDT, refer to local protocol	☐	☐	☐
Notified the Medical Examiner/Coroner about the child's death	☐	☐	☐
Assessed safety of all the **surviving children** within 7 days: - Children in the deceased child's home, whether siblings or unrelated children - Siblings outside the home, with whom the deceased child had regular contact - Children of all subjects, with whom the subject has regular contact	☐	☐	☐
Identified all adults residing in the home within 24 hours to accurately reflect that information in the 24-hour Fatality Report/Safety Assessment	☐	☐	☐
Identified all siblings and all children residing in or regularly present in the home within 24 hours to accurately reflect that information in the 24-hour Fatality Report/Safety Assessment	☐	☐	☐
Identified all parents of children residing in or regularly present in the home within 24 hours to accurately reflect that information in the 24-hour Fatality Report/Safety Assessment	☐	☐	☐
Reviewed prior CPS reports and records involving members of the family/subject(s) within 24 hours	☐	☐	☐
Completed the 24-hour Child Fatality Summary Report	☐	☐	☐
Completed the 24-hour Child Fatality Safety Assessment	☐	☐	☐
Completed the 7-Day Assessment	☐	☐	☐

	Yes	No	NA
Notified the subjects, other persons, and parents of the SCR report within 7 days	☐	☐	☐
Added persons as necessary to the case, and notified as appropriate within 7 days (i.e. All household members and absent parents)	☐	☐	☐
Completed the 30-Day Fatality Summary Report	☐	☐	☐
Completed the 30-Day Fatality Safety Assessment	☐	☐	☐
Contacted the source of the report, or made diligent efforts to do so	☐	☐	☐
Completed the Risk Assessment Profile	☐	☐	☐
Identified and clearly documented reasoning for substantiating and/or unsubstantiating each allegation	☐	☐	☐
Entered incident date into CONNECTIONS	☐	☐	☐
Offered and provided or arranged for needed services to the family	☐	☐	☐
Made a home visit to evaluate the child(ren)'s environment	☐	☐	☐
Contacted appropriate collaterals	☐	☐	☐
Assessed the need for Family Court action, consulting Legal Department when necessary	☐	☐	☐
Conducted face-to-face interviews with the following:			
Subjects of the report	☐	☐	☐
Children residing in or regularly present in the home	☐	☐	☐
Other persons named on report/other adults residing in home	☐	☐	☐

Additional best practice recommendations:

Gathered information from the following individuals or agencies: **(Common sources of pertinent information)** ***Note that some persons below may be appropriate/necessary collaterals, depending on case circumstances**			
	Yes	**No**	**NA**
Parent(s)	☐	☐	☐
Hospital	☐	☐	☐
Medical provider	☐	☐	☐
District Attorney	☐	☐	☐
Law Enforcement agency	☐	☐	☐
Medical Examiner/Coroner	☐	☐	☐
School	☐	☐	☐
Public agency	☐	☐	☐
Community agency	☐	☐	☐
Relatives	☐	☐	☐
Neighbors	☐	☐	☐
Other CPS and child welfare staff	☐	☐	☐
Treatment providers, e.g. mental health, substance abuse, etc.	☐	☐	☐
Other individual or agency with relevant, needed information, including requests for out-of-state records when applicable	☐	☐	☐

Other Helpful Activities			
	Yes	**No**	**NA**
Requested proper documentation of and/or arrange for photographs/X-rays of any physical injuries	☐	☐	☐
Provided relevant safety and risk information to service providers	☐	☐	☐
Requested the autopsy report and/or death certificate (and documented in progress notes as to the cause, manner, and time of death – if known)	☐	☐	☐

3. Non-SCR reported fatality checklist

Regarding the death of a child in an: Open CPS Investigation, Open FAR case, Open CPS Services case, Open Preventive Services case, Open Foster Care case.

This checklist is designed to help guide case activities when a child death occurs in an open case. Completion of this checklist is not required by OCFS. This is an optional tool for use by LDSS staff in considering case activities when a child death occurs in an open case. The following specifically speaks to actions related to the child fatality, not of service case practice.

* **The following specifically speaks to actions related to the fatality, not of service case practice.**
* **This checklist is not all-inclusive. Refer to the CPS Program Manual for complete guidance.**

Upon learning of the child fatality	
Notified the Regional Office of the death by phone within 24 hours (Required by 06-OCFS-LCM-13; 18 NYCRR 441.7)	☐
Submitted the **OCFS-7065 Agency Reporting Form for Serious Injuries, Accidents, or Deaths of Children in Foster Care and Open Child Protective or Preventive Cases** to the Regional Office within 72 hours (Required by 06-OCFS-LCM-13)	☐
Entered the child's date of death into CONNECTIONS	☐
Began gathering information (circumstances/facts) about the death	☐
From the information gathered, evaluated whether there is reasonable cause to suspect the death was a result of abuse or maltreatment by a caretaker	☐
If there was reasonable cause to suspect the death was a result of abuse or maltreatment by a caretaker, an SCR report was made (Required by SSL § 413 & 415)	☐
Completed a Plan Amendment FASP to reflect the child's change in status in the open case – Completed and approved within 30 days. (Only applicable in open Services cases) (Required by 18 NYCRR 428.7)	☐

Best practice recommendations for gathering facts and circumstances regarding the death:

Assessments	
Assessed safety of all the **surviving children** within 7 days: - - Children in the deceased child's home, whether siblings or unrelated children - - Siblings outside the home, with whom the deceased child had regular contact	☐
Documented the safety assessment(s) and whereabouts of all children in a progress note, contemporaneously with the event date(s)	☐
Assessed the family's service needs with respect to the fatality, and arranged for or provided such services as needed	☐

Suggested records for review, depending on circumstances	
CPS/Preventive records	☐
Law enforcement records (criminal history, victim/suspect history, calls for service, statements)	☐
911 calls	☐
EMS reports	☐
Autopsy report/Death certificate	☐
Medical records for deceased child	☐
Medical records for surviving siblings/children in the home	☐
Service Provider records for the parents	☐

Recommended interviews/collateral contacts	
Parents of the deceased child	☐
Surviving children/siblings	☐
Medical examiner/coroner	☐
School	☐
Relatives/family members	☐
Neighbors	☐
Emergency room personnel	☐
Caretakers (babysitters/childcare employees, etc.)	☐
Law enforcement	☐
Medical providers	☐
Agency Personnel (CPS, Preventive, Daycare Licensing, etc.)	☐
First Responders	☐

Documentation	
If no safety concerns were found, a summary statement addressing the safety was entered into progress notes	☐
If safety concerns were found, the following were added to the statement addressing safety:	☐
Name(s) of child(ren)	☐
Date(s) of birth	☐
The child(ren)'s location	☐
Actions taken to assess safety and implement mitigating/protective factors	☐
The cause and circumstances surrounding the child's death, and how it was determined there was not reasonable cause to suspect the death was a result of abuse or maltreatment by a caretaker - entered into progress notes	☐
A summary of activity to date and what plans, if any, there are for future service activity with the family, entered into progress notes	☐

4. Investigating sleep related fatality and injury CPS reports

Conducting a complete and thorough investigation is important for all CPS reports, but especially for those involving a fatality or serious injury. In regard to sleep-related cases, OCFS release 10-OCFS-LCM-15, *Guidance for CPS Investigations of Infant Fatalities and Injuries Involving Unsafe Sleeping***,** provides guidance on what a complete investigation of such a case should include. The following guidance on investigations is generally derived from that release. This guidance refers to "infants," but it may also be applicable to older children who have developmental or medical conditions that make them susceptible to death or injury due to sleep-related conditions.

a. *Some recommended steps for obtaining information*

When conducting a CPS investigation of a report of an infant who has died while sleeping or incurred a sleep-related injury, the following actions are recommended for gathering information:

- Speak with Emergency Medical Services (EMS), law enforcement, and any other first responders or individuals who were on the scene of the incident, in order to obtain specific information pertaining to the cause and circumstances of the infant's injury or death.
- Secure information from first responders or law enforcement regarding the conditions in the home, condition of the infant when they arrived, and any statements made to first responders or law enforcement by those present in the home regarding what transpired.
- Where reasonably possible, locate and view the exact place where the infant's death or injury occurred. Identify where the infant was placed and by whom, and the position (back, stomach, or side) of the infant, both when last observed alive and when found dead or unresponsive.
- Observe the physical living environment and, when the circumstances permit, take photographs or video of the scene. This should be done even if the body has been removed. If the first responders or law enforcement personnel have taken photos or video, request copies of those items. This may assist CPS in conducting an efficient investigation and reduce duplication of efforts.
- Establish and document the timeline of events regarding the incident, including, but not limited to, the events of the day prior to the time when the infant was placed to sleep, if and when the infant was thereafter observed by anyone in the household, and when the infant was discovered to be in distress, through the time when first responders arrived at the home.
- Solicit and record the observations of all persons in the household regarding what they saw and heard with respect to the infant during the timeline established above. Ask relevant household members about these details and, if possible, ask them separately. Document if the family also spoke with law enforcement about the details.
- Consult with the infant's pediatrician and any other service providers. Health and service providers should be asked about the infant's history.
- Obtain the medical examiner's/coroner's report and any reports completed by first responders or law enforcement.

Do not stop collecting evidence or contacting collateral sources because law enforcement or the local district attorney concludes that there was "no foul play" or is not otherwise pursuing criminal charges. Similarly, do not stop or otherwise limit the investigation because the preliminary findings of the medical examiner or coroner do not indicate or suggest the presence of abuse or maltreatment. In all cases, a complete CPS investigation must be conducted and recorded as required by 18 NYCRR 428.5 and 432.2(b)(3), including the ongoing assessment of the safety and well-being of any surviving children in the household.

Be aware that the decision by law enforcement not to arrest the subject or by the district attorney not to prosecute, in and of itself, is not controlling in CPS's decision as to whether there is some credible evidence to substantiate one or more allegations. The district attorney and law enforcement use a standard of evidence that is higher than the one used by CPS.

Also, be aware that officials outside of the child welfare system use terminology that is not consistent with that used by CPS. Medical examiners/coroners use terms that have meanings or implications for them that may be different than they are in child protective terminology. Criminal charges are not the same as making assessments of abuse or maltreatment. For example, if an infant dies of "natural causes" or dies because of what the medical examiner/coroner refers to as an "accident," that does not in and of itself mean that there was not maltreatment in the case. It generally means, for the purpose of the medical examiner/coroner, that the case was not a homicide. Become familiar with the terms used by the medical examiner/coroner and how they are defined. These are the types of cases where you should not only be consulting with your supervisor but also with your agency attorney.

Depending on the case, CPS should consider consulting with medical and/or other appropriate professionals for the purpose of assessing the evidence collected during the investigation to assist CPS in making its determination. This could include deciding to consult with medical experts other than your local medical examiner/coroner.

In those communities in which there is a multidisciplinary team (MDT) or a Child Fatality Review Team (CFRT), local districts should follow the local protocols for working with those teams (see 10-OCFS-LCM-09, *Multiple Disciplinary Teams and Child Abuse Investigations*).

b. *Important information to obtain*

CPS workers should obtain as much information as possible about any and all circumstances that might be relevant to ascertaining the possible cause(s) of an infant's sleep-related death or injury and to assessing possible future risk to any other children in the home. Information should be gathered that will allow CPS investigators to determine the events and circumstances on the day of the incident — prior to, during, and after the death or injury – and to assess them along with any other relevant facts about the family or infant.

What follows is a brief listing of the information that CPS caseworkers should attempt to obtain when investigating reports of an infant's death or injury that may be related to unsafe sleep conditions. This list does not necessarily contain every factor that should be considered, as the relevant factors may vary from one report to another. The following information may be obtained by completing the actions noted in the previous section and by observations, interviews, reviews of previous reports, or other means.

- Determine all aspects of the sleeping conditions at the time of the infant's death or injury including, but not limited to:
  - where the infant was sleeping (in a crib, bed, on a couch, or elsewhere), including an assessment of the firmness of the surface;
  - what, if any, other objects were on the sleeping surface, including pillows, blankets, stuffed animals, or any other objects, and their location in relation to the infant when the infant was placed to sleep, while sleeping, and when found;
  - the position of the infant when placed to sleep, while sleeping, and when found. A reenactment using a doll may be helpful in determining this information. Specifically,
    - was the infant placed to sleep face up, face down, or on its side;
    - where on the sleep surface was the infant placed to sleep;
    - where on the sleep surface was the infant found in distress;
    - was the infant found face up, face down or on its side;
    - was the infant between objects, such as, cushions when found in distress;
    - was the infant's head covered with anything when found;
  - temperature of the room and the amount of clothing worn by the infant;
  - the condition of the room in which the incident occurred;
  - the presence and location of other persons or animals in relation to the infant while sleeping;
  - any other aspects of the environment in which the infant slept.
- If a shared sleeping situation has been identified, be sure to:
  - Determine all of the above information regarding the sleep surface and sleeping conditions, paying special attention to the positional relationship of the infant with any other occupant of the sleeping surface.
  - Identify the number, identity, and size of occupants, including pets, on the bed, couch, or other sleeping surface.
- Inquire into the infant's usual sleeping arrangements, including the infant's usual sleeping location and normal sleeping schedule, and whether the sleeping arrangements at the time of the incident varied from the infant's normal routine.
- Determine if the infant had any medical condition, either a pre-existing condition or one that existed on the day of the incident (for example, mild cold, infection, sleep apnea, use of a respiration monitor) that could enhance risk to an infant in a sleep situation and, if so, whether the caretakers were aware of that risk.

5. Making the determination

A determination is made by applying the facts, as developed as part of a complete CPS investigation, against each of the elements of the definition of abuse or maltreatment.

Abuse – A finding of intent or gross negligence would, as a practical matter, be required in unsafe sleeping cases to satisfy the definition of abuse. Accordingly, it would be extremely rare to have an abuse case in regard to bed sharing.

Maltreatment – In light of that, this release focuses on maltreatment.

In making a determination in a fatality or sleep-related injury report, CPS caseworkers must determine whether the facts of the case, as developed by CPS during its investigation and using the "some credible evidence" standard, satisfy each of the elements of the definitions of abuse as defined in SSL §412(1) / FCA §1012(e) or maltreatment as defined in SSL §412(2) of the SSL / FCA §1012(f).

Each of the respective elements of abuse or maltreatment must be supported by some credible evidence.

For the purpose of the definition of maltreatment, the elements are:

a. The infant's physical, mental or emotional health or condition was impaired or placed in imminent danger of impairment; and

b. The subject of the report failed to exercise a minimum degree of care in providing proper supervision or guardianship to the infant; and

C. The subject's failure to exercise a minimum degree of care caused the impairment or imminent danger of impairment.

Whether a sleep-related fatality or sleep-related injury report, there must be some credible evidence satisfying each of the elements of the definition of maltreatment (failure to exercise a minimum degree of care, impairment or imminent danger of impairment, and causation) for a report to be indicated for maltreatment.

Whether there is a sleep-related fatality or sleep-related injury, the basis for the determination must be timely and completely recorded in the record.

a. *Bed sharing*

This refers to a case involving an infant who dies or is injured and who was sharing a sleeping surface with another person (adult or child). For the purpose of this guidance, bed sharing refers to an infant and one or more persons sleeping together on any surface, not necessarily a bed.

Bed sharing with an infant, by a parent or other person legally responsible, without an aggravating factor or proof of intentionally harming the infant, is not abuse or maltreatment, irrespective of whether the infant is harmed or not.

(i) Failure to exercise a minimum degree of care

The first step in making a determination in a case in which there is a sleep-related death or injury is to determine whether there was a failure to exercise a minimum degree of care. Where a parent or other person legally responsible bed shares with an infant and an aggravating factor is present, the parent or other person legally responsible has failed to exercise a minimum degree of care.

Bed sharing aggravating factors include, but are not limited to:

1. The parent or other person legally responsible was under the influence of alcohol or legal or illegal drugs to the extent that such person's judgment or physical ability was impaired, including the ability to arouse.
2. The infant had a medical condition known to the parent or other person legally responsible and the parent or other person legally responsible had been made specifically aware or should reasonably been aware that, because of the medical condition, bed sharing increased danger to the infant.

3. The parent or other person legally responsible was significantly sleep deprived to the extent that such person's judgment or physical ability was significantly impaired.
4. The physical condition of the sleeping area was unsafe or the contents of the sleeping area created an unsafe condition.
5. The size of the sleeping surface in relation to the occupants (persons, pets and/or objects) created an unsafe condition.
6. The temperature of the room or the sleeping area, including the infant's clothing and bed coverings used, in which the infant was cared for was so extreme as to make it unsafe.
7. Another condition that a reasonable person would understand to place an infant at risk of harm.

If there is not an aggravating factor, then there is no maltreatment, irrespective of whether the child was harmed or not.

If there is an aggravating factor present, then there must be a determination as to whether there was impairment or imminent danger of impairment.

The existence of some credible evidence of an aggravating factor, in and of itself, is not sufficient to indicate a report.

The receipt or the failure to receive safe sleep counseling does not impact the determination whether the parent or other person legally responsible exercised a minimum degree of care in regard to the fatality.

(ii) Impairment or imminent danger of impairment

For sleep-related fatality cases, the issue of impairment is addressed by the death of the child. For sleep-related injury cases, there must be some credible evidence that the infant's physical health or condition has been impaired or placed in imminent danger of impairment.

(iii) Causation

Whether the report is for a sleep-related fatality or sleep-related injury, the issue of causation must also be addressed and resolved.

The test here is whether the subject's failure to exercise a minimum degree of care caused the impairment or the imminent danger of impairment.

Sleep-related fatality cases

For fatality cases, the issue then is whether there is some credible evidence that the death of the infant was caused by the parent's/other person's legally responsible failure to exercise a minimum degree of care.

The means of proving causation includes direct contact and inquiry of the medical examiner or coroner as to whether the death of the infant was caused by the actions of the parent or other person legally responsible.

In all cases, CPS should address the issue of causation with the applicable medical examiner or coroner.

If the medical examiner or coroner affirmatively states that there is no such causation, the report must be unfounded, unless there is credible evidence to the contrary that was not considered by the medical examiner or the coroner when the medical examiner or coroner made his or her findings regarding the death of the infant. In such a case, CPS may apply

such additional evidence to its determination of causation relating to the DOA/Fatality allegation.

If the medical examiner or the coroner states that there is causation between the actions or inactions of the parent or other person legally responsible and the death of the infant, then causation has been satisfied.

If the medical examiner or the coroner does not or cannot give an opinion on causation, then CPS should do the following:

CPS makes the causation determination based on the facts before it. CPS should consult with other medical professionals, such as the infant's pediatrician, the hospital that treated the infant, or the county health department. CPS should consult with law enforcement and EMS personnel who observed the scene. CPS should assess statements from witnesses who are otherwise familiar with the incident or conditions in the home. The CPS worker should not make a determination in such instances without such consultation.

If the conclusion reached by CPS is that there is not some credible evidence that the parent or other person legally responsible caused the death of the infant, the allegation of DOA/Fatality must be unsubstantiated, as must any other allegation that uses the death of the infant as the basis for such determination. Note there may be cases where there is not some credible evidence of causation of the death of the infant, but the facts of the case otherwise support a finding of imminent danger to the infant.

Sleep-related injury cases

For sleep-related injury cases, the issue is whether there is some credible evidence that the impairment or the imminent danger of impairment was caused by the parent's/other person's legally responsible failure to exercise a minimum degree of care.

CPS makes the causation determination based on the facts before it. CPS should consult with medical professionals, such as the infant's pediatrician or the hospital that treated the infant (if medical treatment was received), or the county health department. CPS should consult with law enforcement and EMS personnel who observed the scene. CPS should assess statements from witnesses who are otherwise familiar with the incident or conditions in the home.

If the conclusion reached by CPS is that there is not some credible evidence that the parent or other person legally responsible caused the impairment or created an imminent danger of impairment, the sleep-related injury allegation must be unsubstantiated.

b. *Unattended sleeping infant*

This refers to a case involving an infant who dies or is injured and who is not sharing a sleeping surface with another person (adult or child).

(i) Failure to exercise a minimum degree of care

Where a parent or other person legally responsible leaves the infant unattended and an aggravating factor is present, the parent or other person legally responsible has failed to exercise a minimum degree of care. Unattended sleeping infant aggravating factors include, but are not limited to:

1. The infant was left unattended for an unreasonable amount of time under the circumstances.
2. The physical condition of the sleeping area was unsafe.

3. The contents of the sleeping area created an unsafe condition.
4. The size of the sleeping surface in relation to the occupants (person, pets and/or objects) created an unsafe condition.
5. The temperature of the room or the sleeping area, including the infant's clothing and bed coverings used, in which the infant was cared for was so extreme as to make it unsafe.
6. The parent or other person legally responsible was under the influence of alcohol or legal or illegal drugs to the extent that such person's judgment or physical ability was impaired to the point that such person was unable to adequately supervise the infant.
7. Another condition that a reasonable person would understand to place an infant at risk of harm.

   If there is not an aggravating factor, then there is no maltreatment, irrespective of whether the infant is harmed or not.

(ii) Impairment or imminent danger of impairment; and

(iii) Causation

If there is an aggravating factor present, then there must be a determination whether there was impairment or imminent danger of impairment. As with a fatality report, the issue of causation must also be addressed.

The existence of some credible evidence of an aggravating factor, in and of itself, is not sufficient to indicate a report.

The receipt or the failure to receive safe-sleep counseling does not impact the determination whether the parent or other person legally responsible exercised a minimum degree of care in regard to the fatality.

In those cases, in which there is no bed sharing, the criteria for **Impairment or Imminent Danger of Impairment and Causation** are the same as in cases in which there is bed sharing.

Whether there is a sleep-related fatality or sleep-related injury, the basis for the determination must be timely and completely documented in the record.

M. Kinship Care[3]

The **Kinship Guardianship Assistance Program (KinGAP)** is designed for a foster child to achieve a permanent placement with a relative, or a specified non-relative, who had been the child's foster parent for at least six months. This program provides financial support and in most cases medical coverage for the child, beginning with the child's discharge from foster care to the guardian. The level of financial support is similar to the maintenance payments received while the child was in foster care.

In addition to being the child's foster parent for at least six months, the prospective guardian must be related to the child by blood, adoption, or marriage or related to a half-sibling of the child by blood adoption, or marriage and also be the prospective or appointed relative guardian of such half-sibling. The relationship can be to any degree of affinity. Non-related foster parents who have a positive relationship with the child that was established prior to the child's current foster care placement may also be eligible. The family can have a single parent or two parents. The family may have birth children, adoptive children, or no other children. Families can vary by age, income, lifestyle, and marital status. A KinGAP family must have a strong commitment to caring for the child on a permanent basis.

The foster child must have a strong attachment to the relative who proposes to be a relative guardian. The child must be consulted if age 14 or over. If age appropriate, younger children should be consulted as well. The child must consent if age 18 or over.

The child in foster care does not have to be freed for adoption in order for Kinship Guardianship Assistance to be provided. However, both "return home" and "adoption" must be ruled out as permanency options for the child. The foster child's caseworker will be working with the child's birth family and prospective relative guardian to explore other permanency options or determine that there are compelling reasons for the child not to return home or be adopted.

Because, as stated above, the child's parental rights need not be terminated to achieve Kinship Guardianship Assistance, the legal process from application to finalization can be considerably shorter than freeing a child and legalizing an adoption.

KinGAP requires that agencies must check with the New York State Child Abuse and Maltreatment Register (and other states' comparable registries if adults in the home lived in any other states in the last five years) to determine whether the proposed guardian, or any person age 18 or over who resides in the home, has previously abused or maltreated a child. Also, a state and national (with the FBI) criminal history check for a proposed guardian, or any other person age 18 or over who is currently residing in the home, is required. Since these requirements were met when the foster home was initially certified or approved, they are considered having been met for the KinGAP. An indicated report of abuse or maltreatment or a criminal record does not necessarily prevent Kinship Guardianship Assistance.

Kinship Publications found at http://ocfs.ny.gov/kinship/resources.asp**:**

1. *Having a Voice and a Choice: New York State Handbook for Relatives Raising Children* (Pub 5080) and *Con Vozy Voto: Manual para Parientes Criando a Ninos* (Pub 5080S):

[3] 11-OCFS-ADM-03 KinGAP Guardianship Assistance Program
http://ocfs.ny.gov/kinship/background_and_process.asp

a joint publication of the New York State Office of Children and Family Services and Office of Temporary and Disability Assistance, is at the following link:

http://ocfs.ny.gov/main/publications/Pub5080.pdf

http://ocfs.ny.gov/main/publications/Pub5080-S.pdf

2. *Know Your Options: Relatives Caring for Children* (Pub. 5120) and *Conozca Sus Opciones: Parientes Cuidando a Ninos* (Pub 5120S): a brochure of the New York State Office of Children and Family Services, is at the following link:

   http://ocfs.ny.gov/main/publications/Pub5120.pdf

   http://ocfs.ny.gov/main/publications/Pub5120-S.pdf

3. *Know Your Options: Kin Caring for Children* (Pub. 5175) and *Conozca Sus Opciones: Parientes Cuidando a Ninos* (Pub. 5175S)

   http://ocfs.ny.gov/main/publications/Pub5175.pdf

   http://ocfs.ny.gov/main/publications/Pub5175-S.pdf

4. Know Your Permanency Options: The Kinship Guardianship Assistance Program (Pub 5108) and Conozca sus opciones de permanencia: Programa de Asistencia para Parientes como Tutores de Menores (Pub 5108S)

   https://ocfs.ny.gov/main/publications/pub5108.pdf
   https://ocfs.ny.gov/main/publications/Pub5108-S.pdf

N. Documentation guidelines for Family Assessment Response (FAR) cases

1. Report received

- Upon receipt of the report, a progress note should be entered (by the assigned worker or supervisor) that supports the assignment of the report to the FAR track. If desired, the screening tool used by the district could be cut/pasted into the notes.
- A review of the CONNECTIONS history for the family should be conducted within 24 hours and documented. If there has been prior relevant CPS / FAR history, the worker should summarize the nature of this history and, if available, the family's willingness to participate in the process. Every effort should be made to control for the potential for bias when reviewing prior case history.
- If the report received is a subsequent report and will be screened into FAR, CPS/FAR has the option of consolidating the subsequent report into the prior FAR stage if the consolidation criteria are met, including the requirement that consolidation must take place within 53 days of the prior Intake (see *CONNECTIONS Step-by-Step Guide: Training for CPS Workers* on the OCFS Intranet for additional criteria). If the criteria are not met or if a decision is made to NOT consolidate the stages, the FAR worker *must* complete all the required steps for FAR (e.g. safety assessment, FLAG) and document them in the new FAR stage.

2. 24-hour assessment of safety

An assessment of safety must be *initiated* within 24 hours of the receipt of a report in at least one of the following ways:

- Face-to-face contact with the family and/or child
- Significant telephone contact with the family and/or child
- Significant contact with the source of the report or other identified person if he/she is in the position to provide information about whether the child may be in immediate danger of serious harm.

Documentation should reflect how the safety assessment was initiated in the initial 24-hour period, what additional contacts or information the worker gathered to make a preliminary assessment of the child's safety (i.e., review of prior history, conference with supervisor), what known facts led the worker to believe that the child was not in immediate danger, and any supplemental information.

3. Initial contact with the family

- Whenever possible, first contact made with the family on a FAR report should be with the caretaker and not begin with the children. At the time of initial contact, the family should be made aware of the concerns outlined and efforts should be made to schedule an appointment with the family to further explore the family's strengths and needs. Documentation should reflect this process.
- If the family's phone contact information is not available at the time the report is received, an unannounced visit may be warranted to gather more information and/or make an appointment to meet with the family and any other extended family or resources they deem appropriate.

- Documentation should state how the initial contact was made and what transpired.

4. Description of FAR, notification to the family, and agreement to participate

If eligible for and given the option of participating in FAR, families have the right to choose whether to participate in the FAR process or in an investigation.

- Documentation must clearly state that the worker provided written notice to the family [i.e., each parent, guardian, or other person legally responsible for the child(ren)] offering a FAR response to a CPS report, including information about FAR. (The written notice must also explain the caseworker's role as a mandated reporter.)
- If, in the unusual circumstance that written notification was not provided to one or more of the above persons, the reasons that the notification was not provided must be documented.
- Documentation should indicate that a discussion was held with the family regarding FAR, including that the family was informed of the key differences between the FAR and investigation approaches and of the caseworker's responsibilities as a mandated reporter should safety concerns warrant reassignment to an investigation within seven days or the need for a new report made to the State Central Register.
- Documentation should note if a FAR brochure was given to the family.
- Documentation must clearly state the family's willingness to participate in FAR.

5. 7-day safety assessment

A 7-day safety assessment is required on all FAR cases. The decision to continue a family on a FAR track can only be made after the completion of this initial assessment. Unless case circumstances dictate otherwise, districts are strongly encouraged to use the full seven (7) day period to engage the family and obtain as much information as possible to decide about safety, being aware that the assessment must be complete and a FAR decision made no later than seven days after the report was made. Sources of information to complete a 7-day safety assessment must be documented and include, but are not limited to:

- Contact with and observation of the children and discussion with the family
- Discussion with the source and evaluation of information provided
- Relevant information available from collateral contacts
- Review of previous reports associated with one or more caretakers named in the current report

Only cases with the following safety decision ratings are eligible to continue the FAR track:

1. No safety factors were identified now. Based on currently available information, there are no child(ren) likely to be in immediate danger of serious harm. No Safety Plan / Controlling Interventions are necessary now; **and/or**
2. Safety factors are present, but do not rise to the level of immediate or impending danger of serious harm. No Safety Plan / Controlling Interventions are necessary now. However, identified Safety Factors have been/will be addressed with the parent(s)/caretaker(s)/ person(s) legally responsible and reassessed.

CONNECTIONS will not support selection of the FAR checkbox with any other safety decision rating.

Any information gathered to make this assessment of safety is to be reflected in the progress notes as well as in the completed and approved safety assessment.

6. *Family-Led* assessment

The concept of *Family-Led* is fundamental to the entire FAR process. It begins upon first contact and spans through closure of a FAR case. The family-led process **does not** eliminate the need to point out and explore the presence of concerns identified by the local district with the family. Transparency, in this regard, is key to the FAR process.

- There should be documentation in progress notes that demonstrates a family-led process. This includes, but is not limited to, **the family's** identification of:
  - Individual and family strengths
  - Individual needs and/or concerns as well as those of the family unit
  - Safety and risk concerns
  - Family proposed solutions to family and county concerns
  - Sources of natural / informal support (i.e., extended family, friends, neighbors, church community, etc.)
  - Sources of formal support (i.e., mental health services, educational support, employment services, parenting education, etc.)
- Further, documentation must demonstrate caseworker efforts to **explore and elicit** information pertaining to each area of the Family-Led Assessment Guide (FLAG):
  - Family functioning, resources and relationships (including areas of concern related to safety and risk, i.e., domestic violence, substance abuse, etc.)
  - Child(ren)'s development, strengths and needs
  - Caregiver(s) functioning, strengths and needs
  - Caregiver(s) ability to advocate for child and family needs

Effort should be made to clearly document information elicited from the family in the family's own words, rather than the conclusions made by the caseworker. The worker should note how he/she obtained that information from the family (i.e., if it was using a specific tool such as "three houses," or the type of questioning used).

7. Engagement

"Families are more than the problem that brought them into the system"

Engagement is often synonymous with *involvement*, but families can be involved and compliant without being **engaged**. Engagement is about motivating and empowering families to recognize their needs, strengths and resources, and to take an active role in ensuring the safety of their children and minimizing future risk of harm to their children.

Let the family tell you their story, in their own words, and document it that way. The family's **voice** should be present within the documentation. Let the family identify the strengths and needs of family members and the family and identify them in that way within the documentation.

- Family meetings – when appropriate and possible, efforts should be made to meet with the whole family together, and the meeting documented. Let the family identify who they consider to be members of their family and allow them to invite whomever they feel should be "at the table" for this discussion. Documentation should include a statement

that identifies who was present for the family meeting, describes what role each person plays within the family, and depicts his/her contributions to the meeting.

- Talking to children/youth – all family members' voices should be reflected in documentation, including that of children and youth. Documentation should demonstrate engagement of these youth through conversation or family-led activities and their voice should be reflected in the case record.
- Words such as "interviewed" should be replaced with "assessed," "explored," or "discussed," reflecting the caseworker's ability to facilitate conversation about the family's strengths and needs in partnership with the family members.

8. Solution focused practice

Solutions are different than services; solutions are more than just referrals.

Documentation for a FAR case must clearly describe the family's identified needs but also include core child welfare concerns. Documentation must also demonstrate clear ways to build on strengths in family functioning and the caregiver's ability to advocate for their family's needs through **identifying solutions**. The caseworker should thoroughly explore with the family the formal and informal supports within the community that may address the family's needs and these discussions should be documented. However, this documentation should clearly demonstrate the level of **mutual understanding** of the need that was achieved and/or the benefit for identified supports. Does the family want this intervention?

Some examples of techniques to use (and document) within solution focused practice include the *miracle question, scaling questions*, the *Three Houses* tool, etc. These questions and family-led activities are designed to elicit the family's view and input regarding their circumstances, what they have tried in the past and what they think will be helpful to them moving forward. Documentation should describe the solution focused techniques used and, based on those techniques, the narrative should provide the family's definition of its issues, needs, goals, ideas and solutions.

CPS/FAR should document any goods or services that are purchased to help meet the family's immediate needs, and should note the source of the funds for the goods or services.

For those FAR cases where a preventive services case already exists, collaboration between the FAR worker, the preventive worker and the family should be ongoing throughout the FAR process and documented in progress notes.

9. Safety and Risk

Safety must be continuously assessed throughout the life of a FAR case.

The risk of future maltreatment and solutions to reduce that risk are a central focus of FAR work with a family, and risk is assessed in a manner congruent with the FAR philosophy. The FAR worker must complete at least one FLAG in CONNECTIONS, which indicates that risk assessment has been addressed, and may complete more than one. The thorough exploration with the family of family functioning, strengths, and needs should be clearly documented in the case record to demonstrate the assessment of future risk. Contacts with parents must include an exploration of any safety and risk concerns. These discussions, including the parents' point of view must be clearly documented in progress notes, as well as the agreements reached about maintaining safety, decreasing risk and/or improving child well-being. Additionally, the progress notes should indicate the nature of the supervisory case consultation that took place concerning the exploration of safety and risk.

In solution-focused practice, identified needs should be addressed with supportive services that are designed to reduce future risk for children. Documentation should illustrate how any referrals made for formal and/or informal services are linked to risk reduction.

10. Family Led Assessment Guide (FLAG)

A general assessment of the risk of future abuse or maltreatment must be completed for each FAR family. The FLAG is designed to help inform assessment discussions *with* the family by identifying risk and strengths. It is also instrumental in spurring discussion about planning *with* the family about what assistance or services might be helpful in reducing any identified risk and in supporting child well-being.

- The FLAG must be completed in close consultation with the family prior to closing the FAR case, but should be started no later than 30 days after the report is received.
- The process and techniques used to complete the FLAG should be documented in the progress notes. Discussions about what to do with the information or how identified needs and strengths should be addressed should also be documented in progress notes. Information specific to the issues in the FLAG or clarifying those issues are documented in comment fields within the FLAG.
- When a FLAG is completed, the CPS worker should document in progress notes the identified areas of strength within the family as well as concerns that require some degree of action on the part of the family.
- Further FAR intervention should support the areas of need identified in the FLAG; progress notes should describe the association between those areas of need and actions taken.
- Multiple FLAGs can be completed. If a significant change takes place during the agency's involvement with the family, the FLAG should be revised, if it is still open. If the original FLAG has been finalized, then a new FLAG should be completed.

11. Non-custodial or absent parent

There are many situations in this work where children experience an absence from their lives of one of their parents. Efforts should be made to engage the custodial parent in a discussion as to the reasons why the other parent has been absent and to talk about the important role the absent parent could potentially play in children's lives and/or how the non-custodial parent could potentially benefit the children's well-being. This discussion and information pertaining to the absent parent's whereabouts should be clearly documented. Wherever possible, efforts should be made and documented to determine the appropriateness of engaging this absent parent in the FAR process.

The law is clear that non-custodial and out-of-household parents are entitled to receive notification of the existence of a CPS report (including FAR), but there is no legal requirement to further involve them in the FAR intervention. If the non-custodial/out-of-household parent is not named in the report AND the custodial parent is resistant to providing contact information, the FAR worker is relieved from the notification requirement; however, it's expected that the worker will explore and document the reasons for the custodial parent's reluctance.

12. Collateral contacts

Collateral contacts should be made to help assess child safety, risk and family functioning, as well as to assess resources, both professional and non-professional, that may be mobilized to help support the family. Collateral contacts, however, should not be made for obtaining information concerning the validity of allegations. The family should help identify possible collateral contacts and the CPS worker should almost always seek to obtain the family's permission to make collateral contacts. Any contact made with collaterals must be documented in the case record, and the relevance of the information obtained to assessments, decisions and provision of supports should be made clear.

13. Cultural competence

A family's culture has a direct and significant impact on family functioning. Documentation should demonstrate sensitivity to cultural issues within a family such as ethnicity, race, religion, socio-economic status, familial norms, identified community, gender and gender identification, and/or sexual orientation. Case record documentation should identify any situation in which culture plays a significant role in areas such as decision making within the family, discipline practices, child rearing, and overall family dynamics. Where applicable, documentation should capture the caseworker's efforts to work with the family in ways that accommodate the family's cultural needs (e.g., use of a translator, providing advocacy with systems that are unfamiliar to the family, etc.).

14. Supervision

FAR practice is most successful when sustained by supportive supervision. Case consultation and supervisory guidance provided must be clearly documented either by the FAR caseworker or his/her supervisor. Supervisory comments should be supportive of the FAR process and specify discussions between the caseworker and supervisor and decisions that were made together.

15. Transition / Closing

The decision to end FAR involvement with a family should be a collaborative decision that is clearly documented within the case record.

- Discussions and decisions between caseworker and the family about case closure must be documented.
- Discussions and decisions between caseworker and the supervisor about case closure must be documented.
- Family members are to be left with information and/or supports they can use should they have trouble meeting a need in the future. This must be documented.
- FAR is a family-led process, and can be terminated by the family. If, after the family has collaborated in the assessment, the family decides it no longer wishes to be involved in the FAR process, the CPS must determine if there is evidence of maltreatment or if the children are currently in immediate or impending danger, which are required to call in a new report. These assessments must be clearly documented.
- If the caseworker finds evidence of child abuse or immediate danger during the FAR case, or if the caseworker finds evidence of maltreatment and the parent(s) refuse to cooperate in making needed changes, the caseworker must call in a new report to the Statewide Central Register and document this procedure.
- An important FAR concept is the "*warm handoff*" that CPS/FAR should provide when referring a family to a service provider or transferring the case to a new worker. The

caseworker should invite the service provider or new worker to meet with the family **and** the caseworker at least once before handing off the case. This can ease the transition for the family, as it provides an opportunity for the caseworker and the family to discuss and demonstrate the family's progress, and gives the new worker a chance to explain to the family what happens next. These efforts should be documented.

O. CASE EXAMPLES AND DISCUSSION OF A FAIR PREPONDERANCE OF THE EVIDENCE STANDARD FOR CHILD PROTECTIVE SERVICES INVESTIGATION DETERMINATIONS

Example 1

A nurse at a hospital called the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) to report a mother gave birth to a baby and both the mother and baby tested positive for cocaine. The SCR classified the allegations as Parent Drug Alcohol Misuse (PDRG). The child protective services caseworker (CPS CW) went to the hospital and confirmed the test results. The CPS CW also confirmed that the infant was born three weeks before her due date, appeared to be jaundiced, struggled to feed and would have to spend some time in the neonatal intensive care unit prior to discharge from the hospital. The CPS CW, hospital staff, the mother, and her family created a plan of safe care for the infant's discharge. Pursuant to the plan, the mother would engage in outpatient substance abuse treatment and both the mother's boyfriend (who is not the father of the baby) and the maternal grandmother would be available to assist in caring for the infant. The biological father would also have regularly scheduled visits. All members of the family agreed to the plan. The mother began outpatient substance abuse treatment as soon as she was discharged and prior to the baby being released from the hospital.

Forty-five days later, CPS received two additional reports regarding the family that were accepted by the SCR. The source of the second report was the baby's father and the source of the third report was an emergency medical technician (EMT). The baby's father reported to the SCR that when he arrived to pick up the baby for visitation, he found the mother had overdosed in the garage, the mother was unresponsive, and the baby was unattended on the garage floor crying. The father reported he immediately called 911 for help. The EMT who called the SCR reported the mother overdosed on cocaine mixed with fentanyl and had to be revived. The EMT did not describe the baby's condition, but stated the baby was present. The SCR classified both reports as Parent Drug Alcohol Misuse (PDRG).

CPS CW followed up with several interviews. During his interview with the CPS CW, the father reiterated the allegations he made to the SCR. The mother's boyfriend had a different account stating he was upstairs taking care of the infant so the mother could visit a friend down the street. He did not know the mother was in the garage until the ambulance arrived. During an interview with the EMT, the EMT informed the CPS CW the baby was present at the scene but was being cared for by the mother's boyfriend. The EMT never observed the child unattended. The mother informed the CPS CW that she left the baby with her boyfriend while she planned to visit a friend down the street, but before leaving the house she stopped in the garage to get high and that was when the overdose occurred. The mother agreed to enter an inpatient substance abuse treatment facility, and in accordance with the plan of safe care, made arrangements for her boyfriend and mother to care for the baby and for the baby to continue regular with visitation for the father.

The CPS CW is inclined to indicate all three reports against the mother for PDRG.

Can the reports be indicated under the fair preponderance of evidence standard?

No.

Discussion

To indicate the mother of a newborn with a positive toxicology, CPS must determine that the child's physical, mental, or emotional condition was impaired or was in imminent danger of impairment due to the mother's failure to exercise a minimum degree of care. Evidence that a newborn tested positive for a drug in its bloodstream or urine is in and of itself insufficient to indicate the report. As described in the *Child Protective Services Manual*, other conditions that a newborn has, which may or may not be attributable to in utero exposure to drugs, is also insufficient in and of itself to support a determination that the child was maltreated. After receiving a report in which PDRG is alleged, CPS must determine whether drug or alcohol misuse has occurred or is occurring and if so, whether the child's physical, mental, or emotional condition was impaired or is at imminent danger of becoming impaired as a result.

In this example, the question of whether the mother's overdose occurred in the presence of the infant such as to leave the infant unattended and impaired or in imminent danger of becoming impaired was not established by a fair preponderance of the evidence. The mother's overdose is a significant event; however, the boyfriend reported he was safely caring for the infant during the entire event, and the EMT provided corroboration. Therefore, the report cannot be indicated against the mother for PDRG.

Note that if the initial report called in by the hospital was accepted by the SCR prior to January 1, 2022 and the two subsequent reports were called in on or after January 1,2022, the reports in this example could not be consolidated.

Example 2

A school guidance counselor contacted the SCR and made allegations against the mother of Callie (age 15). The source stated that Callie is a lesbian and has made that known to her friends and teachers for over a year. Last night, Callie told her mother she is a lesbian, and her mother punched her in the face and pushed her. Callie took pictures with her phone of her face and sent it to her friends, but the mother subsequently took her cell phone and told Callie she can no longer associate with these people. Before her phone was taken, Callie called the guidance counselor and told her that her mother would not let her go to school and that her mother told her that she (Callie) should kill herself. Mother called the school at noon and said she would be withdrawing Callie from school as she believes the school is at fault for supporting her child's sexual orientation.

The SCR classified the allegations made against the mother as Emotional Neglect (EMOT) and Excessive Corporeal Punishment (EXCP).

When the CPS CW went to the home, the mother openly acknowledged that she is not in support of her daughter being a lesbian; however, she denied punching Callie in the face and pushing her. The mother admitted to suggesting to Callie that she should consider suicide if she was not going to change her sexual orientation. Mother stated homosexuality is against her belief system and that she will be enrolling Callie in a private school, which will "fix everything," if she does not kill herself. CPS CW observed Callie and did not notice any marks on her face, although she did note that her face looked slightly swollen. When the CPS CW asked Callie about her mother's response to her disclosure, Callie looked down and said, "she was really mad, and told me to kill myself." The CPS CW inquired further if her mother became physical violent with her and Callie nodded yes but would not answer verbally. The CPS CW asked Callie if she felt suicidal, Callie nodded yes, started to cry, and left the room. CPS CW made a referral for Callie to receive mental health services. The CPS CW interviewed the source of the report who identified the friends Callie reported as the recipients of the photos. The CPS CW reached out to Callie's friends, one of whom was willing to talk about what happened. This friend shared screen shots of the text messages from Callie about the incident

and a selfie Callie had sent right afterwards. In the text messages, Callie conveyed that her mother punched her in the face, pushed her, and made homophobic comments. In the photo, Callie's right cheek was red and swollen. A week later, the CPS CW followed up with Callie by phone. Callie reported her mom had calmed down, but her mother was still not accepting that she is a lesbian, which makes her very upset. Callie also reports that her mother refuses to transport her to receive the mental health services that she was referred to. Callie confirmed that she is now attending the new school but still feels strongly about her sexual orientation and is still considering her mother's suggestion to kill herself. CPS CW spoke with the mother who confirmed that she would not be transporting Callie to her mental health services referral as she felt that they are no longer needed now that Callie has changed schools.

The CPS CW is inclined to indicate the report against the mother for EXCP and EMOT because:

a) there is photographic evidence of an injury to Callie's face consistent with her being punched by her mother (EXCP); and

b) upon being informed her daughter reported to a school official that she was suicidal, the mother openly admitted to encouraging suicide and refused transportation to follow through on the referral for mental health services (EMOT).

Can the report be indicated under the fair preponderance of evidence standard?

Yes.

Discussion

In this case, Callie took and disseminated a photograph of her injured face contemporaneously to being punched by her mother. This photograph and Callie's disclosure of what occurred to the CPS CW and her friend outweigh the mother's denial, and this evidence meets the fair preponderance standard to substantiate the allegation of EXCP.

The allegation of EMOT can also be substantiated against the mother under a fair preponderance of the evidence standard based on the mother's comments encouraging her daughter to commit suicide and disregard for her daughter's suicidal ideations. Specifically, in this example, the mother refused to transport her daughter to her referred mental health services and openly admitted to encouraging her daughter to commit suicide. This conduct amounts to a failure to exercise a minimum degree of care in relation to her child's physical, mental and emotional condition. The mother's admissions and her conduct meet the fair preponderance standard for the CPS CW to substantiate the allegation of EMOT as Callie remaining suicidal establishes that her mental and emotional condition had been impaired as a result of the mother's failure to exercise a minimum degree of care.

Example 3

A person called the SCR to report his neighbor is regularly selling and using drugs with her two young children present and that strangers are coming and going at all hours of the night and some of them may have guns. The SCR accepted the report and classified the allegations as Inadequate Guardianship (INGD) and Parent Drug Alcohol Misuse (PDRG).

When interviewed by the CPS CW, the source of the report complained of loud music, fights in the home, the smell of marijuana smoke, and hearing the children cry all the time. The source could not provide any detailed information to the CPS CW as to why he believes his neighbor is selling or using drugs in the presence of her children. The source did state his neighbor is "up to no good" and if the CPS CW only saw "the type of people" coming in and out of the apartment, the CPS CW would have all the evidence she needed that drug use and sales were occurring in the home.

When the CPS CW knocked on the mother's door, the mother answered and was very upset to learn a CPS report had been called in against her. The mother adamantly denied the CPS CW access to her home but did agree to talk in the hallway. The mother denied there was any drug sales or fights occurring in the apartment. She did report she has two cousins who occasionally stay with her after working a late shift at a nearby business but insisted no one has ever entered her home with a gun in their possession. The mother said she periodically smokes a little marijuana on the fire escape after the children are asleep but questioned why this was an issue since marijuana is legal and she is always capable of caring for her children.

The mother allowed the CPS CW to see her two children in the doorway but would not permit a private interview to be conducted. Both children are under the age of 5 and remained silently clinging to their mother's legs while the CPS CW tried to ask them questions. The children did not have any visible injuries and were appropriately dressed. The mother repeatedly expressed her frustration and distrust of CPS and said she was outraged CPS had come to her home. The CPS CW was agitated due to the way the mother spoke to her and that she was not allowed into the apartment nor allowed to speak with the children without the mother present.

The CPS CW is inclined to indicate the report against the mother for INGD and PDRG.

Can the report be indicated under the fair preponderance of evidence standard?

No.

Discussion

The information provided by the source may reflect he has an implicit or explicit bias against the subject. Additionally, the source was unable to provide any evidence to support the maltreatment allegations he made against the mother.

Adult recreational use of marijuana became legal in New York State on March 31, 2021 (see Chapter 92 of the Laws of 2021 – commonly referred to as "the Cannabis Law"). A report of alleged child maltreatment cannot be indicated solely because the subject of the report purchases, possesses or consumes marijuana, unless CPS has a fair preponderance of evidence that such behavior by the subject of the report resulted in impairment or imminent danger of impairment to a child's mental, physical, or emotional condition in accordance with the legal definition of child maltreatment. Although the mother acknowledged she occasionally uses marijuana, there was no evidence that such use impacted her ability to provide the minimum degree of care to her children. Moreover, the evidence gathered by the CPS CW did not establish that the physical, mental or emotional condition of either child in the home was impaired or was placed in imminent danger of impairment as a result of the mother's conduct. Furthermore, refusing to allow the CPS CW entry into her home, in and of itself is insufficient evidence to substantiate an allegation of INGD or PDRG against the mother Therefore, the allegations of PDRG and INGD against the mother in this example cannot be substantiated.

If a CPS CW is denied access to a home or to a child, they should consult with a CPS supervisor and discuss the appropriate course of action. A situation may arise when a CPS CW is unable to locate a child or is denied access to the home or child and the CPS CW has a reasonable cause to believe the child's life or health may be in danger. When this situation occurs, the CPS CW must advise the parent or PLR with whom the child is residing that if denied sufficient access without further notice, CPS may seek an order from family court to compel the parent or PLR to produce the child and/or to permit access to the home (see Social Services Law sections 424(6-a), 424(6-b)).

Example 4

A hospital staff member called the SCR alleging a 3-year-old child was treated in the emergency room after eating an entire package of cannabis gummies the parents kept in the home. The child is believed to have consumed nine cannabis gummies, each containing 10 mg of tetrahydrocannabinol (THC). Upon arrival to the hospital, the child was delirious and vomiting violently. Hospital personnel had to pump the child's stomach and admitted the child overnight for monitoring and to treat acute dehydration. The SCR accepted the report against the mother and father and classified the allegation as Poisoning / Noxious Substance (POIS).

The CPS CW arrived at the hospital and confirmed the allegations with the source and both parents. The parents reported they purchased THC-infused gummies, which were contained in a sealed package. The parents reported the clear package of gummies was left on the living room coffee table, but they did not think this was unsafe to do as the packaging seemed secure. The package appeared to be difficult to open, and they did not think their 3-year-old could access the gummies. The parents were interviewed separately, and the mother reported she was in the kitchen preparing lunch and the father was upstairs when the child managed to open the package and consume the gummies. The father confirmed during his interview the mother's version of events. Both parents assured CPS they only used the gummies after the children had gone to bed and that they will no longer keep THC-infused gummies in the house. The CPS CW had no other safety concerns for the family and did not think the case warranted the filing of an Article 10 proceeding in family court.

The CPS CW is inclined to indicate both parents for POIS.

Can the report be indicated under the fair preponderance of evidence standard?

Yes.

Discussion

The change in the standard of evidence does not mean CPS should only indicate reports that lead to the filing of an abuse or neglect petition pursuant to Article 10 of the Family Court Act.

Adult recreational cannabis use has been legal in New York State since March 31, 2021. However, the Cannabis Law provides that adults shall take reasonable steps designed to ensure that persons under the age of 21 cannot access cannabis (see Penal Law section 222.15(4) and (5)). The parents in this case did not take reasonable steps to ensure their young child could not access the THC-infused gummies, such as storing them in a location that was inaccessible to the child. THC-infused gummies are particularly attractive to children and should have been safely secured.

Both parents failed to exercise a minimum degree of care by failing to secure the THC-infused gummies. The direct result of that failure was the child ingesting a large amount of THC which caused actual physical harm. Therefore, the CPS CW has collected sufficient information to establish that a fair preponderance of the evidence supports the substantiation of the allegations of POIS against both parents and indication of the report in this example.

Example 5

A school official contacted the SCR on February 15 to report that since December 1, Robert (age 13) has not logged in for class via Zoom for 25 total days but has attended on in-school days. Roberts is now failing social studies and math and is disengaged. School officials have contacted the parents several times to report his online absences. Robert's parents have responded to a few of these

contacts and stated they are having difficulty with online learning. The SCR accepted the report against both parents and classified the allegations as Educational Neglect (EDNG).

When interviewed by the CPS CW, the parents reported that the first Chromebook the school gave to Robert in September did not work and it took the school almost a month to provide another one. The parents cannot afford to purchase a computer for Robert. The mother stated she works outside of the home and is not present during the day. The father explained that he is salesman, and his employer has allowed him to work from home on the days when Robert has online school. However, the father stated that he is constantly on the phone making sales calls and cannot always assist Robert. The child does have an individualized education program (IEP) plan and parents report that the child has not missed a single day of in-school instruction or any of his speech therapy sessions, which are provided in school.

The CPS CW interviewed Robert who said he does not like online learning, and it is very hard for him. He said he enjoys attending school in person. Robert reported no problems at home, and he appeared clean and well-adjusted at interviews. No safety issues were discovered.

School officials confirm Robert has attended all his in-school days and speech therapy sessions in accordance with his IEP. A teacher reported Robert is currently failing two classes due to his online absences and he continues to struggle even with a working Chromebook.

The CPS CW is inclined to substantiate the allegations of EDNG against both parents.

Can the report be indicated under the fair preponderance of evidence standard?

No.

Discussion

The definition of child maltreatment in relation to failure to provide appropriate education requires that the child is impaired or is in imminent danger of becoming impaired as a result of the failure of the subject to exercise a minimum degree of care in providing education to the child notwithstanding the efforts of the school district or local educational agency and CPS to ameliorate such alleged failure.

When school began in September, Robert was given a nonfunctional Chromebook that the school did not replace for a month. Furthermore, although the school reported to the parents that Robert was not attending his online school days, no evidence was provided to demonstrate that school officials made efforts to resolve the problem.

Robert's parents did ensure that he attended every in-person school day and all of his speech therapy sessions in accordance with his IEP. The mother could not assist Robert with his school work during the day because she works outside of the home. The father is home with Robert on his online days; however, the father must also attend to his own work duties during that time to maintain employment.

In this example, there is not a fair preponderance of the evidence to substantiate the allegations of EDNG against Robert's parents.